

TO: Westford Planning Board
Westford Zoning Board of Appeals

FROM: Route 40 Clean Air Coalition
route40cleanaircoalition@gmail.com

DATE: 4/6/15

RE: ASPHALT PLANT TRANSPORTATION IMPACT ASSESSMENT

We write to highlight some of the errors, omissions and findings in the Applicant's own Transportation Impact Assessment (TIA) dated February 2015 by Vanasse & Associates, Inc (Vanasse). We believe that these issues arising from the applicant's own consultant provide ample basis of the Planning Board and Zoning Board (ZBA) to deny the applications now before them.

Withheld Data Files

Both the Planning Board and the ZBA know that we have requested the actual data files and the sources for detailed assumptions be provided to us so that we could review them. At its 3/31/15 meeting, the ZBA asked the applicant whether it would do so. The applicant refused even though it provided similar information back in August of 2009. This is unfortunate. Without the data files and the methodological basis for the assumptions used, the TIA is suspect. Let us give you one example.

Vanasse estimates that of the 250 truck trips allowed to and from the site during a single workday, only 37 of those trips (roughly 15%) will occur during the morning peak-hour. From this hypothesis, it then bases several conclusions regarding the impact of this traffic on the morning rush hour along Route 40. Where did this assumption come from? Vanasse did NOT document whether it surveyed other manufacturers of paving materials to see when surrounding towns and contractors are likely to send trucks for pick up of paving material from the site. Rather Vanasse simply used an estimate that the applicant provided even though the applicant has every reason to under-estimate the number of trucks at the morning peak to avoid a bottleneck. TIA at p. 21. ("Peak-hour traffic volume projections for the Project were derived from the daily trip estimates and operational information provided by the Project proponent.") If, rather than 15%, 20% of the permitted trucks come and go during the morning peak, then the modeling and congestion at the intersection of Groton Road and Commerce Way could be much worse. But we will never know based on the withheld data.

Incorrect Assumptions

Obviously, one of the key assumptions in a study like this one is what the speed limit is on the roads at or near the site. The TIA states that the posted speed limit on Groton Road is 35 mph. It builds on this assumption, noting that it has examined sight lines for up to 45 mph (ten mph above the "posted" speed limit). TIA at p. 2. This representation of the posted speed limit is plainly incorrect. While the posted speed limit on Route 40 in Chelmsford is a reduced 35 mph, that ends at the town line and the speed limit on Route 40 in Westford is the normal 40 mph on such roads. Since trucks will be exiting the project on Commerce Way at a stop sign and turning left across traffic onto Route 40 towards Route 3, one has to ask how long it takes for a large asphalt-hauling truck to go from a standing stop, turn, and accelerate to 40 mph? Although we are not traffic consultants, we think it would take a little while. So, we believe the project will almost certainly degrade the speed and flow of traffic traveling East along Route 40, which is precisely the way many Westford residents get to Route 3 each and every morning. Again, the point here is that the speed limit for traffic on Route 40 has been represented as 35 mph when, in fact, it is 40 mph. Attached is a copy of an email from Town Engineer Paul Starratt confirming this fact.

Failed Intersections

The most important conclusion of the TIA is that the Groton Road/Oak Hill Road and Groton Road/Commerce Way intersections are both already **failed intersections** with levels of service that are **unacceptable** during peak hours. TIA at pp. 7-8. The report also notes that there are neither sidewalks nor bike lanes or bike paths in this section of Groton Road. TIA at p.3.

The Groton Road/Oak Hill Road intersection has already been the scene of a **fatal accident** in just the last three years. TIA at p.4. It is rated as one of the worst 100 intersections in the region. TIA at p.4. The TIA notes that operating conditions at the Groton Road/Oak Hill Road intersection get a grade of F whereas a grade of at least D is required to be deemed acceptable:

Critical movements at the Groton Road/Oak Hill Road intersection were shown to operate under constrained conditions (defined as a level-of-service (LOS) "F") during the peak hours under 2015 Existing conditions independent of the Project.

TIA at p. 7. Although there are suggestions that this intersection will eventually be signalized there is currently no budgeted commitment by the Town or the MassDOT to do so.

Even more important than Groton Road/Oak Hill Road are the existing, failed conditions at Groton Road/Commerce Way, through which virtually all of the traffic for this Project will pass. Even before one adds the proposed additional traffic from this Project, the existing conditions for vehicles trying to turn left out of Commerce Way onto Groton Road have to wait too long during peak times:

Vehicles exiting Commerce Way (the driveway to 540 Groton Road) at its intersection with Groton Road were shown to operate at LOS "E"/"F" during the weekday morning peak-hour independent of the Project as a result of the relatively large volume of conflicting traffic along Groton Road. With the addition of Project-related traffic, operating conditions for vehicles exiting Commerce Way were shown to degrade from LOS "D" to LOS "E" during the weekday evening peak hour and to continue to operate at LOS "F" during the weekday morning peak-hour ...

TIA at p. 8. The modeled traffic for this study presupposed that the Project would add 37 vehicle trips during the morning peak-hour and 25 vehicle trips during the evening peak-hour. TIA at p. 2.

What does all of this mean to real people like us? Let us put it bluntly. These two intersections are already not functioning acceptably. During the morning rush hour and the evening rush hour, traffic trying to turn onto Groton Road across a line of traffic on Groton Road already has to wait an unacceptably long time. To these admittedly bad conditions, the Project proposes to add at least 37 additional trucks in the morning and 25 trucks in the evening. What is likely to happen at these two locations? Well, initially, trucks trying to exit the Project are going to have to wait and wait and wait to turn left coming out of Commerce Way and onto Groton Road. They will line up in queues of 2-4 trucks, TIA at p. 8, waiting and waiting to make that left hand turn across oncoming traffic. There will be no signal there to give them any relief. Eventually, they are going to get impatient, inch out, and take chances turning onto Groton Road. One can readily predict, given human nature, that there will be accidents when an impatient truck driver coming from this Project miscalculates. In the resulting truck-automobile accident, who is more likely to be seriously injured? The truck driver or the Westford mom driving her kids to school or home from soccer practice?

We think it is simply irrational to approve a Project that has to use a failed intersection for virtually all of its considerable traffic without requiring that the Project take steps that improve the intersection so that it is no longer failing (e.g., gets a grade of "D" or better). There has already been a fatal accident at Groton Road and Oak Hill Road. If you approve this Project without requiring that the Groton Road/Commerce Way intersection be improved so that it does not fail during rush hours, just how long will it take before there is a fatal accident at Commerce Way?

Traffic Limits, Monitoring and Reporting

In preparing the TIA, Vanasse took the proposed cap of 250 vehicle trips per day to and from this Project and prepared their model by allocating those vehicle trips among the various types of trips (liquid asphalt, RAP, Imported Aggregate, Exported Product, Fuel Oil, and Employees). TIA at p. 6. All trips, with the exception of employee trips were assumed to be trucks. Only 64 trucks (128 vehicle trips) were allocated to Exported Product (sales of hot top). TIA at p.6.

If either the Planning Board or the ZBA were inclined to approve this project, **which we hope is NOT the case**, the respective Boards should not only require that the overall vehicle trips be capped at 250, but also require that the subcategories of vehicle trips be capped at the numbers set forth in the report. This ensures that the Project operates in the manner in which this traffic study has been modeled.

In addition, because the traffic impact during rush hour (peak-hours) is so problematic, the respective Boards should require that all truck traffic that does not constitute Exported Product be confined to off-peak hours. The Applicant can readily require of its employees, vendors and suppliers (liquid asphalt, RAP, Imported Aggregate, Fuel Oil, and Employees) that they come and go at non-peak times as a way of mitigating peak hour impacts. Customers for hot top however need it when they need it so we are not suggesting that they be restricted from the peak-hours.

Although the TIA proposes various ways of monitoring the traffic, Vanasse fails to suggest the one foolproof means of monitoring the traffic, a security camera that is fully functional and can be reviewed if there is any question regarding what is happening. In this day and age when cameras are everywhere, there should be cameras installed at the entrance to the site and at the intersection of Commerce Way and Groton Road, as well as any and all possible access/egress points.

Finally, monitoring is not enough. There must be swift and certain consequences if the monitoring shows that the permit has been violated, including the suspension and/or loss of the permit.

Thank you for considering our thoughts and requests. Once again, for the many reasons noted above, we request the board(s) deny these applications.

From: Paul Starratt [<mailto:pstarratt@westfordma.gov>]
Sent: Tuesday, March 17, 2015 4:57 PM
To: John Mangiaratti
Cc: Justin Howard; Jeremy Downs
Subject: Re: official speed limit on groton road

John:

I have cc'd Justin Howard at NMCOG since you both asked the same question within minutes of each other. This was also a topic of discussion at last night's Planning Board meeting during the Newport Materials public hearing for the proposed asphalt plant.

MGL Chapter 90, Section 18 requires that the posting of numerical speed limit signs be based on an engineering study as approved by MassDOT and the Registry of Motor Vehicles, and subsequently adopted by the local jurisdiction. Since no such study has been conducted, approved or adopted along Groton Road, MGL Chapter 90, Section 17 applies by default.

Section 17 states that, 'it shall be prima facie evidence of a rate of speed greater than is reasonable and proper...if a motor vehicle is operated on any other way outside a thickly settled or business district at a rate of speed exceeding forty miles miles per hour...' I understand this to mean that unless it is otherwise proven to be incorrect by an engineering study, the speed limit near the Newport Material's driveway is forty miles per hour. This is further supported by the presence of ample sight distance along this straight section of road.

For your reference, I have attached a well written MassDOT Tech Report on Speed Limits & Speed Limit Setting.

Justin also asked about the speed limit on Boston Road between Littleton Road and Interstate 495. This is a State Layout, so we have asked District 3 to provide us with the results of any speed studies they have conducted.

Paul Starratt, P.E.
Town Engineer
Town of Westford
28 North Street
Westford, MA 01886
Ph: 978-360-0498
Fx: 978-399-2739
pstarratt@westfordma.gov

John Mangiaratti writes:

Hi Paul




What is the official speed limit on Groton Road from Oak Hill Road to the Chelmsford line?

thanks


John



John S. Mangiaratti
Westford Assistant Town Manager
jmangiaratti@westfordma.gov
978-692-5501

All email messages and attached content sent from and to this email account are public records unless qualified as an exemption under the [Massachusetts Public Records Law](#).

From:  K Liner <kpliner@gmail.com> Wednesday, April 08, 2015 3:43:35 PM  

Subject: Letter to Town of Westford, Planning Board and ZBA

To:  **Jeffrey Morrisette**

Attachments:  Attach0.html / Uploaded File (2K)
 Dear Town of Westford.docx / Uploaded File (15K)

Please see attached. Please distribute per planning board meeting, to PB, ZBA and town officials.
Thank you
Kim Liner

April 8, 2015

Dear Town of Westford, selectman, ZBA and Planning Board,

I am writing this letter as a concerned mother, resident of Westford and Pediatric Nurse Practitioner. I have many concerns regarding the asphalt plant in Westford. Here are a few that I feel need consideration.

My first concern is in regards to the air quality of the town and in relation to the location of two Westford schools. Asthma is a concern of many children in Westford, including my own child. Dust, mites, pollen, smells or fumes from perfumes, and simple pollutants can trigger asthma symptoms in asthmatic patients. I am concerned that although the EPA report states that the air quality of this plant is safe, I am unsure that the truck and burning asphalt pollution, chemicals, sediment and settling particles in the air will not cause harm to our developing children and will likely trigger asthma symptoms. I do not feel that an EPA report can rule out an increase in asthma symptoms for asthmatic children or prevent a life threatening asthma exacerbation in one or many of these children. The quality of life for these children will decrease as their symptoms increase. More exacerbations means missed class, missed school, poor performance in school as well as lowered test scores. Overall quality of life will decrease dramatically with an increase in air pollution in the town, as in most cities as was reported in other towns with asphalt plants. What will we do to accommodate these children when they are ill? Please consider the clean air and green living that Westford stands for. Think of our little children, so close to the ground where the settled particles lay, think of their lungs and the amazing energy that they have for life, for running and playing outside. Please allow the children to have clean air.

The next concern that I have is noise. At the Planning Board meeting, noise was discussed. One of the residents asked the board and expert panel how noise will affect the school. The expert stated that the amount of noise that will travel to the school will not cause speech interruption. They stated that this meant that the children and teachers will not have any difficulty hearing one another while talking in a normal tone in the classroom. While this sounded promising, one question remains... will this sound be heard in the classroom while it is silent? The noise expert at the planning board meeting stated that there was no data to confirm or deny that there would be interruption in the classroom while there was no chatter going on. They do not know how much interruption of thought or how much interruption of learning that the plant will cause. Does this mean that there is a chance that while the students are working quietly or while they are taking MCAS or other testing that they may hear the rumble of trucks, the crushing of rock, the dumping of asphalt? I believe that it does. If they did not study this, then we cannot assume that it will not affect the children at the Miller and Nabnasset schools that are less than ½ mile and 1 mile away. There is a large number of children with sensory disabilities, with attention disorders and other medical diagnoses that cause difficulty with concentration in a regular classroom. Will they have even more difficulty if more noise is heard? How will we accommodate these children? How will we protect them?

One of the reasons we moved to this town because of the school system. If the town allows this plant to be built so close to the schools, many families will not want to move here, families will leave town and the school system will suffer, test scores will drop and Westford will no longer be a desirable town. I attended the School Committee meeting this past week and the asphalt plant was brought up. The school committee and superintendent expressed their concerns with the plant as well. Please consider their input as this town's success has much to do with the schools here and because of the school committee, dedicated teachers and school administration. Please do not disregard their opinions.

The integrity of the schools, the town and of the reputation that has taken years to build is at stake. Westford will not stand above other towns if the plant is developed. Westford will become just another town.



Please. Please consider the children of this town, their health and their bodies. They are our future.

Sincerely,

Kimberly Liner, PNP


9 Tenney Road

From:  Doug Moore <dm1050@necs.biz>

Thursday, April 09, 2015 8:34:40 AM  

Subject: Public record

To:  **Jeffrey Morrisette**

Attachments:  Attach0.html / Uploaded File (4K)

Hi Jeff,

I wanted to follow up an email I sent you yesterday regarding my opposition to the Newport Materials asphalt plant. Evidently I was supposed to make it clear that my opposition should be considered public record. Therefore if you could please declare my opposition as public record, I would greatly appreciate it. Thank you.



Regards,

Doug Moore

43 Russell's Way


Westford, MA 01886

From:  Doug Moore <dm1050@necs.biz>

Wednesday, April 08, 2015 3:36:52 PM  

Subject: Asphalt plant

To:  **Jeffrey Morrisette**

Attachments:  Attach0.html / Uploaded File (6K)

Hi Jeff,

My name is Doug Moore residing at 43 Russell's Way with my wife and 3 kids. I have been attending some of the recent meetings regarding the asphalt plant. Understandably this has become a hotly contested issue because of what could potentially be at stake for residents that abut the Newport Materials property. I am by no means an expert when it comes to zoning laws and regulations. I also don't come armed with scientific data on sound levels and the chemical composition of pollutants that will seep into the atmosphere. I try to take a step back from all the minutia and take a common sense approach and ask why an asphalt plant in a town like Westford is being considered at all. I have not seen anyone provide any positive benefits to the residents of Westford. Conversely there has been voluminous information presented stating the potential downside to something like this. Like you, we all moved to a town like Westford to get away from urban environments to raise our families. We never thought we would have to fight for something such as this. Westford is a town that has turned away the likes of Wal-Mart and drive throughs. How can an asphalt plant be given any consideration at all? A project that would clearly put the property values in the area at risk.




The two biggest problems I see are noise and traffic. With regard to traffic I don't see any way possible that 125 additional trucks coming in and out of that property each day would not cause major traffic issues. I drive that way every day for work and trucks have a difficult time gaining speed because of the incline on Rt. 40 located approximately where the entrance to Newport Materials exists. I would call into question the traffic study that characterizes 125 additional trucks as "normal" traffic conditions. I don't see how it's possible.

As for noise, why would anyone who steps outside their house in Westford want to hear manufacturing of anything? We all purchased our homes knowing about the existing quarry. I recall going to my property prior to purchasing it and listening to see if it would be bothersome to me. I didn't hear much of anything. If the noise level of this plant were present at the time, I may have stayed away. Potential buyers for homes in our neighborhood may stay away if this plant is allowed, thus putting our property values at risk.






The planning board has no doubt witnessed the passionate pleas from the Westford residents opposing this project. I ask that you please vote down the asphalt plant and represent the wishes of the people who live in this town. Thank you for your time and your volunteer service.


Sincerely,

Doug Moore

From:  Mark Miner <m-miner@airvana.com> Thu, Apr 09, 2015 3:22:12 PM  

Subject: Concerns regarding Asphalt plant sound issue

To:  **Jeffrey Morrisette**  mgreen@westfordma.gov
 mlewin@westfordma.gov  khollister@westfordma.gov
 dgalvin@westfordma.gov

Attachments:  Attach0.html / Uploaded File (25K)

To: The Westford Planning Board and Zoning Board
c/o Jeffrey Morrisette – Town Planner

From: Mark & Claire-Marie Miner
9 Sweetwood Circle – Westford, Ma

Subject: Proposed Asphalt plant sound issue

Due to the venue and time constraints of the last Planning Board meeting which addressed the sound issue, I was not able to voice my questions/concerns on the sound issue. Thus I would like to briefly cover them here:

In a previous note to the board I had expressed concern/confusion over the fundamental requirement of 70dBA max vs 10 dB above ambient of 43dBA (53dBA). Based on the last planning board meeting, it is now my understanding that the 53dBA is indeed the more restrictive requirement, and really the only level we need to focus on. Is that correct?

I also understand that the judge has stated that, if the Asphalt company complies to the 53dBA (and by inference the 70dBA), from a sound perspective, the board cannot block the Asphalt company based on the sound issue. Is that correct?

If the above are both true, I am concerned that the discussions at the last Planning Board meeting may have been far less productive than I would have hoped. Specifically,

- By accepting the sound simulation of the applicant, and as confirmed by the town consultant, does this absolve the applicant from meeting the 53dBA requirement when the plant is actually in operation? (I assume not)

- The town consultant generally agreed with the applicant's simulation results. However, our consultant was assuming the applicant's inputs to the simulation were correct. While I would have questions around this, does it really make any difference? Isn't it really the applicant's problem if his simulations are wrong? If his simulations are incorrect, and he builds the plant and can't get to 53dBA, isn't he just wasting his money? (I assume so)
- If the plant is installed, and the applicant takes all measures possible to mitigate the noise and still cannot get down to the 53dBA number, must he cease operation? (I assume so)
- If the plant is built and actually meets the 53dBA number, and it is later concluded that the 53dBA is disturbing to our children at the nearby school (understandable concerns expressed by some that night), do we have any recourse other than to move the school? (I assume not). Alternatively if somehow we can prove now that the level the judge has set is disturbing to the children, can the town go against the judge's ruling and stop the plant? (I assume not).
- Is there any way to appeal the judge's sound limit decision, and if so, is it important to prepare for this now? (I assume this may be a follow-up?)

If the answers to the above are as I suspect (the judge's ruling stands and the plant can operate if it meets 53dBA when built, regardless of our concerns), then I would think there is little value in energies spent by the town and its citizens in determining if the applicant's simulations are correct, or if 53dBA is too loud.

Instead, I feel it would be more productive to turn our attention to the measurement and enforcement of the 53dBA requirement. Key questions (and agreement between the town and applicant) that should be answered before the decision are:

1. What time average is inherent in 53dBA? Is this an average over 24 hrs, 12 hrs, 1 hr or 1 min? If undefined, the applicant can later state he is meeting this requirement over 24 hrs - at night it is very low (43dBA for example) while in the day it is higher than we are expecting (63dBA for example), yet the average is met. What if there are periods of operation where 15 min of every hr, noise is higher than 53dBA - is this acceptable? What if it's 100dBA but only for 1 min? etc. In short, would it not make sense for the board to get this clearly agreed with the applicant before the decision?
2. How will this level be monitored? Can the applicant be required to place and maintain sound sensors at agreed spots around the property boundaries and record levels per an agreed approach, with the town auditing the data on request (or as initiated by complaint by locals)?
3. If sound levels are later shown to be above 53dBA, how long does the applicant have to remedy the situation?
4. If ambient sound goes greater than 53dBA, how do we get agreement that the cause is the Asphalt plant? They may point to other operations nearby, and argue that it's not them. How will these disagreements be settled?
5. Related to the above is the subject of the rock crusher. At the meeting it was stated that the belief was that it was not operational during the ambient measurement which established the 43dBA number. It is very possible that new Asphalt demand on the recycling activity places increased demands on the rock crusher, and even though not technically part of the Asphalt plant, it is the Asphalt plant that is


leading to the noise increase from that source. Should they not be held responsible for this?

I assume there are many other questions in line with the above. So while I did learn a lot on the sound issue at the last town meeting, I am concerned that we have not yet breached the topics that may be more in line with what the town can control. Given we are running out of time, I would hope that even if the above questions cannot be worked openly in the public meetings, the board will work to make sure any final rulings give careful consideration to the above.


Again, I thank you for your efforts in this difficult process.


Sincerely,

Mark Miner

From:  Kelly Doonan <khdoonan@gmail.com> Friday, April 10, 2015 10:12:28 PM  

Subject: Looking for Help

To:  Kelly Doonan <khdoonan@gmail.com>

Bcc:  **Jeffrey Morrisette**

Attachments:  Attach0.html / Uploaded File (6K)

4/10/2015

Town of Westford
Planning Board and
Zoning Board of Appeals
55 Main Street
Westford, MA 01886

Re: Proposed Asphalt Plant

Dear Planning Board and Zoning Board of Appeals Chairs and Members,

As a concerned citizen of Westford and also on behalf of my husband and young twin boys, I am writing regarding the proposed asphalt plant. We reside at 27 Chippewa Road in Westford. The proposed asphalt plant would negatively impact my family and this town in several ways:

1. My son has autism. I know first hand the struggles faced by the child and families, as well as the increased demands supporting those needs places on our schools. In an article presented by, Age of Autism, a "...study out of Harvard shows air pollution is associated with an increased risk of having children with autism -- and that mercury and diesel fuel, which contains mercury along with other environmental miscreants, double the risk." It further states that, "Women who were exposed to the highest levels of diesel or mercury in the air were twice as likely to have a child with autism than women who lived in the cleanest parts of the sample,"

<http://www.ageofautism.com/2013/06/mercury-and-autism-together-again-pollution-study.html>

2. My other son suffers with asthma. Fumes from the asphalt plants are known triggers for asthmatic children.

<http://www.whatisglobelife.com/html/health-effects-of-children-living-near-asphalt-plants.html>

3. There is documented proof of increased brain cancer in children who live near asphalt plants. Based upon all of the public information on the toxicity of asphalt, would you feel

comfortable allowing your children or grandchildren to play outside, less than ¼ mile from an asphalt plant?

<http://www.whatisglobelife.com/html/health-effects-of-children-living-near-asphalt-plants.html>

So I ask you this, why are we inviting these problems into our community? Aren't our residents more valuable than an asphalt plant? *There is no amount of economic value this plant can bring that will be worth more than the harm it will do to our families and this town.* The points mentioned reflect not just how the proposed asphalt plant would negatively impact me and my family, but hundreds of other families in the vicinity. I applaud those of you who have denied Newport Material's petitions and requested waivers. For those who are undecided or are in favor of the plant, I respectfully ask that you seriously consider these factors. We need to protect Westford!


In conclusion, I appreciate your consideration and request that the Planning and Zoning Boards deny all of Newport's petitions and requested waivers.



Sincerely,



PastedGraphic-1.tiff

Kelly Doonan

From:  Joanne Guilmette <joguilmette@icloud.com>

Sun, Apr 12, 2015 1:39:27 PM  

Subject: Westford Asphalt Plant

To:  **Jeffrey Morrisette**


I am writing you with great concern over the proposed Asphalt plant in Westford. Newport Materials states that nobody bicycles in the area. This statement is untrue. I am a triathlon biker within a mile radius of the proposed plant. Sharing the narrow already busy road with 250 trucks going in/out will be hazardous to bicyclists. The asphalt plant will impact the safety of its residents. Please include this letter as part of public record. Thank you for your time in reading my concerns.

Sincerely,

Troy Guilmette
Resident of Westford since 1968


Sent from my iPhone

From:  **Marty Corbett** <marty.corbett@gmail.com>

Mon, Apr 13, 2015 10:06:54 AM 

Subject: Fwd: Asphalt plant

To:  **Jeffrey Morrisette**

Attachments:  **Attach0.html / Uploaded File (5K)**

To Westford ZBA,

I want to thank you all for considering the residents opinions that live in the near vicinity of the proposed asphalt plant. I know this has been a challenging subject for many and I appreciate the patience and professionalism you have provided to the nearby residents..

I also want to thank Paul MacMillan, Scott Fitzgerald and Jay Enis for voting to deny 2 out of the 3 proposals put forth by Newport Materials. As a nearby resident, I really appreciate the fresh air that I breath now. Personally, I have had a difficult time understanding how Westford could even imagine itself as an industrial town of this sort. Many years ago, before I lived in Westford, I told my wife that if I ever got a chance again to move to Westford I would take it. I had made the mistake of moving to another town prior to moving to Westford. So, when I was ready to move again, Westford was the only town I wanted to move to. Since I have moved to Westford I have been extremely happy with that decision. I only hope, that I did not make a huge mistake. I would never have moved to Westford, if I knew an asphalt plant like this would even be considered. It never crossed my mind that Westford would approve such a thing. What I find is even worse is that this kind of decision could potentially set a precedent for something even worse. Now, I can even imagine Westford approving a nuclear power plant next to the asphalt plant. Or, some other place in Westford that may be even more undesirable. This is not the Westford I really wanted to move to. I just hope that I do not have to consider leaving Westford. I have enjoyed many years here and hope to enjoy many more.




This proposed asphalt plant will have detrimental effects to our quality of life and property; many questions still remain about the facility regarding traffic and the usage of odor-absorbers. There are many particulates that are spewed into the air not only by the plant but by all the trucks. Where is the impact analysis for all of the trucks to find out what kind of detriment they will have to the quality of life on the nearby residents? If this is approved, for Westford's sake I hope we do not find 20 years down the road that these trucks caused severe health issues with the residents. I urge you to vote against this plant. Most people outside of Westford when told that an asphalt plant is being considered are shocked, because they as well do not consider this to be in character with Westford. I believe if this plant is accepted into Westford, that you will find significantly more industry trying to get into Westford and significantly more residents trying to get out of Westford. Which Westford do you want to live in?

To the zba members that voted to deny, I am pleading with you to hold your ground and not be swayed by Doug Deschenes's letter. Your constituents are counting on you to make the right decision! To the zba members that voted to approve, please reconsider. You are helping to define what the future character of Westford looks like to everyone who lives here and to those outside of Westford.


Thank you,


Marty Corbett


Westford MA

From:  Vipin Palawat <vpalawat@gmail.com> Tue, Apr 14, 2015 11:43:55 AM  

Subject: Re: ASPHALT PLANT HEARING: Monday, 4/13, 7:45PM

To:  "route40cleanaircoalition@gmail.com" <route40cleanaircoalition@gmail.com>

Cc:  Jeffrey Morrisette

Attachments:  Attach0.html / Uploaded File (14K)

This is good info but not sure if the following is already covered which may be new info.

Flawed Tests Underestimate Health Risks.

In addition to smokestack emissions, large amounts of harmful “fugitive emissions” are released as the asphalt is moved around in trucks and conveyor belts, and is stored in stockpiles.

A small asphalt plant producing 100 thousand tons of asphalt a year may release up to 50 tons of toxic fugitive emissions into the air. [Dr. R. Nadkarni] Stagnant air and local weather patterns often increase the level of exposure to local communities.

In fact, most asphalt plants are not even tested for toxic emissions. **The amounts of these pollutants that are released from a facility are estimated by computers and mathematical formulas rather than by actual stack testing, estimates that experts agree do not accurately predict the amount of toxic fugitive emissions released and the risks they pose.**

According to Dr. Luanne Williams, a North Carolina state toxicologist, **40% of the toxins from asphalt plant smokestacks even meet air quality standards—and for the other 60% of these emissions, the state lacks sufficient data to determine safe levels.**

I will talk to you over phone as soon as I get a chance.

-Vipin

On Tue, Apr 14, 2015 at 10:53 AM, route40cleanaircoalition@gmail.com <route40cleanaircoalition@gmail.com> wrote:

Hi Vipin,

I was hoping to reach you by phone, as it would be easier to discuss. I tried the only phone number I had for you, [978-467-5489](tel:978-467-5489), but would guess you're at work and cannot talk anyway.

You are more than within your rights to send further communication, but I don't think the material you're discussing will help. And I will explain why.

Back in 2009/2010, we said all of these things. So, the Town asked Newport to provide a very costly Health Risk Assessment. They did. The Town hired a peer reviewer. The Department of Public Health was also involved. In the end, no one was able to "prove" there would be any significant health risks. You can find some of the documents at the links below.

Newport's submission:

<http://dms.westfordma.gov/imageapi.php?docid=Qmx1ZVJpdmU1MTQ5M3ItU3lzdGVtcyAxNyA1>

Town's Peer Reviewer's final comments:

<http://dms.westfordma.gov/imageapi.php?docid=Qmx1ZVJpdmU1MTcxOHItU3lzdGVtcyAxNyA1>

If you still feel you want to submit information, you could send it to Jeffrey Morrisette <jmorrisette@westfordma.gov>, and ask that it be part of the public record for both the Planning Board and Zoning Board of Appeals. He may say it's better that you bring it with you and hand it to them tonight. But in the end, the general information from BREDL isn't going to help in this circumstance.

You might want to read the letter Newport submitted, which summarized what I'm saying:

http://westfordma.gov/pages/government/towndepartments/boardsandcommittees/WestfordMA_planning/documents/newportasphaltdocuments/Planning%20Board%20Agendas%20and%20Packets/2015-04-08%20letter%20from%20DeFelice.pdf

Hoping to still see you tonight. Our presence matters.

Alisa.

On Tue, Apr 14, 2015 at 10:29 AM, route40cleanaircoalition@gmail.com <route40cleanaircoalition@gmail.com> wrote:

Vipin,

Is there a phone number I can reach you at?

Alisa.

On Tue, Apr 14, 2015 at 7:36 AM, Vipin Palawat <vpalawat@gmail.com> wrote:

Is there an Email address that can be used to write additional concerns to planning and zoning board ?

Newport was just talking about odor suppression but they cannot remove all the chemicals going into air which can cause cancer related issues.

Please see link below for studies done by federal agencies and info that state air pollution measurements are not accurate and impact to residents after the opening of plant near it.

http://www.bredl.org/pdf/BeSafe_Aspphalt.pdf

I am not sure if this is already discussed but wanted to point out in case it can help.

Vipin

Sent from my iPhone

On Apr 13, 2015, at 3:22 AM, "route40cleanaircoalition@gmail.com" <route40cleanaircoalition@gmail.com> wrote:

REMINDER: PLANNING BOARD HEARING TONIGHT!

Monday, April 13 at 7:45 p.m.
Blanchard Middle School Auditorium
14 West Street, Westford

Please consider sitting in the front rows of the auditorium so the board and cameras will note our presence.

Also, we want to remind everyone that regardless of the Planning Board's decision, **the process will NOT be over.** We must remain steadfast and focused on the next step, which is the Zoning Board of Appeals. Beyond that, there may be opportunities for appeals.

----- Forwarded message -----

From: route40cleanaircoalition@gmail.com <route40cleanaircoalition@gmail.com>
Date: Wed, Apr 8, 2015 at 11:31 PM
Subject: ASPHALT PLANT HEARING: Monday, 4/13, 7:45PM
To: Alisa N-H <route40cleanaircoalition@gmail.com>



NEXT PLANNING BOARD HEARING

Monday, April 13 at 7:45 p.m.
Blanchard Middle School Auditorium
14 West Street, Westford



The board also posted a meeting for the following night, 4/14 in case additional time is needed. However, it is possible the Planning Board will close the public hearing Monday night.






This may be your final opportunity to provide your input to the Planning Board.

(If you have received this email in error, or to be removed from this distribution, please email
route40cleanaircoalition@gmail.com)

From:  **ELIZABETH SHERRY** <lizecsiii@msn.com> Tue, Apr 14, 2015 11:55:37 AM 

Subject: PB 1504 SPR/SP MCP/SP WRPOD/SP under 9.3/SWM - 20 Commerce Way (also kno...

To:  devans@westfordma.gov  **Jeffrey Morrisette**

Attachments:  Attach0.html / Uploaded File (2K)
 Westford Vernal_Pool_Article_for_STM_8-1-06.pdf / Uploaded File (35K)
 ma-aerial-survey-pvp.pdf / Uploaded File (1.8M)
 2013 General Bylaws Town of Westford.pdf / Uploaded File (498K)
 Letter to Westford Planning Board Conservation Commission .docx / Uploaded Fil...

Attached please find a letter from me and various important documents as they relate to Newport Materials LLC, vs. Planning Board of Westford, et al. Please make sure to submit these documents to all involved in this matter today for their review before attending the second Public Hearing tonight at 7:30, April 14, 2015, at Blanchard School. Thank you for your consideration and efforts in advance regarding this case.

Sincerely,

Elizabeth (Liz) Sherry
10 Kylemore Drive
Westford, MA

April 14, 2015

To: **The Westford Planning Board and Legal Staff; the Westford Conservation Commission;
The Westford Zoning Board**

From: Elizabeth (Liz) Sherry
10 Kylemore Drive
Westford, MA 01886

Subject: Information attached supporting my comments on record at Mon.

April 13, 2015's Planning Board Public Hearing regarding PB 1504 SPR/SP MCP/SP
WRPOD/SP under 9.3/SWM - 20 Commerce Way (also known as 540 Groton Road)
(Newport Materials LLC and 540 Groton Road LLC)

Dear Sirs/Madams,

Attached you will find the **Massachusetts Aerial Photo Survey of Potential Vernal Pools** document which I referred to at last night's public hearing. And yes, it is dated 2001, but, don't let that fool you as to the very relevant, important information contained within it which we/Westford should take into consideration regarding this case. The most important pages as it relates to the Newport Materials LLC asphalt plant issue at hand are found on pages 71 – 80 (I've also included the info. shown on these specific pages within the body this letter for your convenience). The **MA Wetlands Protection Act** protects towns, but, not well enough. We need to protect our towns Vernal Pools/Wetlands more than we are currently doing by adopting a Vernal Pools/Wetlands Bylaw Upgrade as soon as possible. Doing so **WILL** be the key to our winning this case against Newport Materials LLC. If there is a river on Newport's property, this would further help and strengthen our case as **The Rivers Protection Act** would also have to be adhered to, not to mention what is also found under **Massachusetts Surface Water Quality Standards**. **To accomplish all of this we need to take this vernal pool/wetlands issue seriously and upgrade our existing Vernal Pool Bylaw as soon as possible like we attempted to somewhat do back in 2006.** I've attached this 2006 Westford document and included it in the body of this letter for your reference as well. Had we been more strategic and passed this back in 2006, we would not have to be entertaining Newport Materials LLC's asphalt plant project request once again. This attempted 2006 Westford Vernal Pools/Wetlands Bylaw Upgrade stated as follows:

Telephone (978)692-5524 Fax (978) 399-2558 Email bturner@westford.mec.edu TOWN OF WESTFORD CONSERVATION COMMISSION TOWN HALL 55 Main Street Westford, Massachusetts 01886

ARTICLE : to see if the Town will vote to amend its nonzoning wetlands bylaw (Chapter 171, Code of the Town of Westford) as follows: Amend Section 171-2.A

by deleting the term “vernal pool” where it currently appears between the words, “swamp” and “or beach” and adding the following phrase at the end of the existing paragraph

“or within two hundred (200) feet of any vernal pool.”

And amend Section 171-9. (Definitions) by deleting the definition of “Vernal Pool” as it currently reads and replacing it as follows:

“The term “vernal pool” shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations thereunder, 310 CMR 10.00, and as excerpted in the Massachusetts Aerial Photo Survey of Potential Vernal Pools, Massachusetts Natural Heritage & Endangered Species Program, 2001, any confined basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains 200 cubic feet of water at some time during most years (an isolated wetland may be determined to be a vernal pool even though it has less than 200 cubic feet of water at some time most years), is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions

for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries, Natural

Heritage and Endangered Species Program. The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The adjacent upland resource area for vernal pools shall extend 200 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is less. In either case the adjacent upland resource area for vernal pools shall not extend over lawns, gardens, landscaped or developed areas existing at the time of the adoption of these regulations.”

Or act in relation, thereto.

I also noticed this relevant information found in the 2013 Westford Bylaws document which should help our cause as well.....

General Bylaws of the Town of Westford, Massachusetts June 2013 § 171.6: Notice and hearings. [Amended 5-11-93 Adj. ATM Art. 21.]

A. At the time of the filing of a Notice of Intent or Request for Determination the applicant shall submit a current list of abutters to the land for which the application is submitted according to the most recent records of the assessors, including those across a traveled way or body of water. The Commission shall provide a proper legal notice to the applicant, who shall then be responsible for mailing in a timely fashion to arrive several days before the scheduled hearing, copies of the notice to said abutters. The applicant shall present to the Conservation Commission acceptable U.S. Post Office receipts showing that such a mailing has been performed. No public hearing under this bylaw may open until such proof of notification has been presented to the Commission. When the applicant is other than the owner of the property, then the applicant must also mail a copy of the notice to the owner.

B. Hearings.

C. The Commission shall conduct a public hearing on any application or request for determination, with written notice by the Commission given at the expense of the applicant, 5 working days prior to the hearing, in a newspaper of general circulation in the municipality.

D. The Commission shall commence the public hearing within 21 days from receipt of a completed application or request for determination.

E. The Commission shall issue its permit or determination in writing within 21 days of the day following the close of the public hearing thereon.

F. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, Massachusetts General Laws chapter 131, section 40.

G. The Commission shall have authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission at its discretion, or comments and recommendations of boards and officials. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

§ 171.7. Permits, determinations, and conditions. [Amended 05-07-2005 ATM Art. 25]

A. If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

B. The Commission is empowered to deny a permit for failure to meet the requirements of this by-law; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable or cumulatively adverse effects upon the wetland values protected by this bylaw; and where the Commission deems that no conditions are adequate to protect those values.

C. A permit shall expire 3 years from the date of issuance. Notwithstanding the above, the Commission at its discretion may issue a permit expiring 5 years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is

given to the Commission. The Commission may, at its discretion, extend any permit for up to three (3) periods of up to three (3) years each.

D. For good cause the Commission may revoke or modify any permit issued under this bylaw after public notice and public hearing, in accordance with the provisions of section 171.6, and notice to the holder of the permit.

E. The Commission in an appropriate case may combine the permit or other action on an application issued under this bylaw with the Order of Conditions issued under the Wetlands Protection Act.

§ 171.8. Rules and regulations.

A. After public notice and public hearing the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

B. At a minimum these regulations shall define key terms in this bylaw not inconsistent with this by-law.

§ 171.9. Definitions. [Amended 5-13-91 Adj. ATM Art. 22; 5-7-94 ATM Art. 24]

The following definitions shall apply in the interpretation and implementation of this bylaw.

Alter shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

- A. Removal, excavation or dredging of soil, sand, gravel, or aggregate materials of any kind
- B. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics
- C. Drainage or other disturbance of water level or water table
- D. Dumping, discharging or filling with any material which may degrade water quality
- E. Placing of fill, or removal of material, which would alter elevation
- F. Driving of piles, erection or repair of buildings, or structures of any kind
- G. Placing of obstructions or material in a body of water
- H. Destruction of plant life including cutting of trees
- I. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water
- J. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

Bank shall include:

- A. The portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, it occurs between a water body and an upland. A bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel or stone.
- B. The upper boundary of a bank is the first observable break in the slope or the mean annual flood level, whichever is lower. The lower boundary of a Bank is the mean annual low flow level.

Beach: see definition for “bank.”

Bog: see definition for “freshwater wetland.”

Brook shall be defined as a body of running water, in accordance with the definition of “stream.”

Buffer zone shall be defined as all those areas that lie within 100 feet of the boundary of any bank, freshwater wetland, flat, marsh, wet meadow, bog, swamp, vernal pool, beach, brook, stream, pond, or lake; or within 100 feet of the 100-year flood line, as determined under the Federal Emergency Management Agency (FEMA)

Freshwater wetland [Amended 10-17-2011 STM, Art. 11] shall be defined as wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provides a significant part of the supporting substrate for plant community for at least 5 months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.

Notwithstanding the above, the following man-made areas shall not be considered freshwater wetlands:

- (a) basins or lagoons which are part of wastewater treatment plants;
- (b) swimming pools or other impervious man-made basins; and
- (c) individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years;
- (d) retention and detention ponds created as part of a stormwater management system.

Swamps, as used in this section, shall mean areas where groundwater is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders, ashes, azaleas, black alder, black spruce, buttonbush, American or white elm, highbush blueberry, larch, cowslip, poison sumac, red maple, skunk cabbage, sphagnum mosses, spicebush, black gum tupelo, sweet pepperbush, white cedar, willow.

Wet meadows as used in this section, shall mean areas where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all, of the following plants or groups of plants: blue flag, vervain, thoroughwort, dock, false loosestrife, hydrophilic grasses, loosestrife, marsh fern, rushes, sedges, sensitive fern, smartweed.

Marshes as used in this section, shall mean areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums, bladderworts, bur reeds, buttonbush, cattails, duck weeds, eelgrass, frog bits, horsetails, hydrophilic grasses, leatherleaf, pickerel weeds, pipeworts, pond weeds, rushes, sedges, smartweeds, sweet gale, water milfoil, water lilies, water starworts, water willow.

Lake shall be defined as a body of water with a surface area of 10 or more acres, either artificial or natural.

Marsh See definition for “freshwater wetland.”

Person shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the

extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

Pond [Amended 10-17-2011 STM, Art. 11] Any open body of fresh water with a surface area observed or recorded within the last ten years of at least 10,000 square feet. Ponds may be either naturally occurring or man-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended drought. Periods of extended drought for purposes of this definition shall be those periods, in those specifically identified geographic locations, determined to be at the "Advisory" or more severe drought level by the Massachusetts Drought Management Task Force, as established by the Executive Office of Environmental Affairs and the Massachusetts Emergency Management Agency in 2001, in accordance with the Massachusetts Drought Management Plan (MDMP).

Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds:

- (a) basins or lagoons which are part of wastewater treatment plants;
- (b) swimming pools or other impervious man-made basins; and
- (c) individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.

Stream shall be defined as any body of running water, including brooks, continuous or intermittently flowing, moving in a definite channel in the surface of the ground.

Swamp: see definition for "freshwater wetland."

Vernal pool shall be defined as a vernal pool certified by the Massachusetts Natural Heritage and Endangered Species Program.

An extremely important thing to keep in mind is where the Sudbury Vernal Pools/Wetlands Bylaw Upgrade document attached states that **"To address the shortcomings of the Wetlands Protection Act, many towns throughout the Commonwealth have implemented local bylaws, administered by the conservation commission, that protect any vernal pool (officially certified or not), and upland habitat surrounding them. Some even refine their definition to include extremely small vernal pools. When properly constructed and adequately justified, bylaws are powerful tools for protecting a town's vernal pool resources along with critical upland non-breeding habitat."**

Please look closely at the wording here. Through this it shows that our town DOES have the ability to exercise great power and have the final say over what it decides it wants to protect and conserve for itself and its townspeople.

The National Heritage and Endangered Species Program's advice for town's that are having trouble figuring out how to adequately protect their town and its citizens from **outside industrial threats** states a superior example of a town taking controlled, aggressive action to protect itself. They show this via the Sudbury, MA Vernal Pools/Wetlands Bylaw Upgrade document example presented in their findings which Sudbury put in place for their town. A very important part noted in Sudbury's document which we should look at closely is as follows:

Town of Sudbury Wetlands Administration Bylaw (Revised June 1998)

Bylaw Section 1. Purpose

The purpose of this bylaw is to maintain the quality of surface water, the quality and level of the ground water table and water recharge areas for existing, or potential water supplies; to protect the public health and safety; to protect persons and property against the hazards of flood water inundation; to protect the community against the costs which may be incurred when unsuitable development occurs in wetland resource areas; and to provide for the reasonable protection and conservation of certain irreplaceable natural features, resources and amenities for the benefit and welfare of the present and future inhabitants of the Town of Sudbury.

Accordingly, this bylaw protects the wetlands, related water resources, and certain adjoining land areas in the Town by providing for prior review and control of activities deemed to have a significant or cumulative adverse effect upon wetland values, including but not limited to the following: protection of public and private water supply, protection of ground water, flood control, erosion and sedimentation control, storm damage prevention, avoidance of water and soil pollution, protection of fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the “wetlands values protected by this bylaw”). This bylaw is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures to augment those of the Wetlands Protection Act, G.L. Ch 131, §40 and Regulations thereunder, 310 CMR 10.00.

With the collaborative teamwork and help from the Zoning and Planning Boards, the Sudbury Conservation Commission was able to make this work and I truly feel Westford could do so as well if we tried (like we somewhat tried to do back in 2006). If we put this upgraded Vernal Pools/Wetlands Bylaw into place, I believe Newport Materials LLC wouldn't be able to succeed in putting their asphalt plant in our town at all. It would not be possible for Newport, they wouldn't be able to function because of the laws it would enforce. The upgraded Sudbury Bylaw is very strict when it comes to any type of disturbances made to the Vernal Pools/Wetlands, etc. For example, from what I can tell, Newport wouldn't even be able to put up the huge wall they stated around their property for noise reduction because doing so would harm the Vernal Pools' ecology. By Sudbury upgrading their Conservation Commission Vernal Pool/Wetlands Bylaw, they not only protected ALL the vernal (potential and certified) pools/wetlands in their town, but also “blanket protected”, if you will, their entire town's valuable natural resources (both animal and plant life), character, property values, future unknown costs to the town as well as their citizen's health and human rights, etc. There's no reason why we can't follow Sudbury's lead and do what they were able to do or even moreso.

Please note too that on the Mass DEP website it shows under their **MA Probabilistic Monitoring and Assessment Program Sampling Schedule** that this year, in 2015, our region (which they call the Northeast Region of MA) will finally be assessed once again for vernal pools, wetlands, etc. The last time this was done was back some years ago. Therefore, the town can call the MA DEP to find out when they will be coming to our town this year. This is exciting because we'll be able to see what their updated, new information will show us in current time all of the Vernal Pools/Wetlands located on the Newport property. This information would then help solidify what we already know which is there ARE many vernal pools and wetlands on Newport Materials LLC's property which are not being adequately protected by our town's current Vernal Pools/Wetlands Bylaw. All the vernal pools and wetlands in Westford should be protected by our town by the maximum governance allowed according to our State and Federal Laws. I truly feel that if our town could upgrade its Vernal Pool/Wetlands Bylaw, Newport Materials LLC would never be able to construct or operate their proposed asphalt plant in our town.

Most importantly, I spoke with a Conservation Agent yesterday and today who told me that as a next step if we deny/reject the applicant Newport Materials LLC's project request to build and operate this asphalt plant in our town it will have to go to court again. This would be a great strategy for our town to pursue because it would give us the time needed to upgrade our Conservation Commission's Vernal Pools/Wetlands Bylaw to hopefully be an "exact replica of or even better Bylaw" than Sudbury's Bylaw BEFORE Newport Materials LLC could resubmit their permit requests again. In the MA document attached, it also offers assistance to towns to help put such upgraded Bylaws in place if they need it. I strongly think the Conservation Commission and Zoning and Planning Boards should take advantage of this State assistance provided right away. We can make a difference here; this WILL help us to succeed!

Please, I plead with you to sit down with the Conservation Commission and the Zoning Board regarding this matter and consider all of this information. Please review all of the information carefully during your/the town's current and near future decision-making process. Our town can't "afford" the future problems and troubles this asphalt plant WILL present to us, unknowingly or not. If we approved this asphalt plant project that Newport Materials LLC puts before us, it WILL open up a huge can of worms for Westford. No matter what Newport Materials LLC states, we all know deep down that the future physical and biological health of our town and its people are truly at stake here.

Sincerely,

Elizabeth (Liz) Sherry

Encls.

General Bylaws of the Town of Westford, Massachusetts June 2013 § 171.6: Notice and hearings. [Amended 5-11-93 Adj. ATM Art. 21.]

A. At the time of the filing of a Notice of Intent or Request for Determination the applicant shall submit a current list of abutters to the land for which the application is submitted according to the most recent records of the assessors, including those across a traveled way or body of water. The Commission shall provide a proper legal notice to the applicant, who shall then be responsible for mailing in a timely fashion to arrive several days before the scheduled hearing, copies of the notice to said abutters. The applicant shall present to the Conservation Commission acceptable U.S. Post Office receipts showing that such a mailing has been performed. No public hearing under this bylaw may open until such proof of notification has been presented to the Commission. When the applicant is other than the owner of the property, then the applicant must also mail a copy of the notice to the owner.

B. Hearings.

C. The Commission shall conduct a public hearing on any application or request for determination, with written notice by the Commission given at the expense of the applicant, 5 working days prior to the hearing, in a newspaper of general circulation in the municipality.

D. The Commission shall commence the public hearing within 21 days from receipt of a completed application or request for determination.

E. The Commission shall issue its permit or determination in writing within 21 days of the day following the close of the public hearing thereon.

F. The Commission in an appropriate case may combine its hearing under this bylaw with the hearing conducted under the Wetlands Protection Act, Massachusetts General Laws chapter 131, section 40.

G. The Commission shall have authority to continue the hearing to a date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission at its discretion, or comments and recommendations of boards and officials. In the event the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

§ 171.7. Permits, determinations, and conditions. [Amended 05-07-2005 ATM Art. 25]

A. If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant or cumulative effect upon the wetland values protected by this bylaw, the Commission, within 21 days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

B. The Commission is empowered to deny a permit for failure to meet the requirements of this by-law; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable or cumulatively adverse effects upon the wetland values protected by this bylaw; and where the Commission deems that no conditions are adequate to protect those values.

C. A permit shall expire 3 years from the date of issuance. Notwithstanding the above, the Commission at its discretion may issue a permit expiring 5 years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is

given to the Commission. The Commission may, at its discretion, extend any permit for up to three (3) periods of up to three (3) years each.

D. For good cause the Commission may revoke or modify any permit issued under this bylaw after public notice and public hearing, in accordance with the provisions of section 171.6, and notice to the holder of the permit.

E. The Commission in an appropriate case may combine the permit or other action on an application issued under this bylaw with the Order of Conditions issued under the Wetlands Protection Act.

§ 171.8. Rules and regulations.

A. After public notice and public hearing the Commission shall promulgate rules and regulations to effectuate the purposes of this bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this bylaw.

B. At a minimum these regulations shall define key terms in this bylaw not inconsistent with this by-law.

§ 171.9. Definitions. [Amended 5-13-91 Adj. ATM Art. 22; 5-7-94 ATM Art. 24]

The following definitions shall apply in the interpretation and implementation of this bylaw.

Alter shall include, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this bylaw:

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- B. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics
- C. Drainage or other disturbance of water level or water table
- D. Dumping, discharging or filling with any material which may degrade water quality
- E. Placing of fill, or removal of material, which would alter elevation
- F. Driving of piles, erection or repair of buildings, or structures of any kind
- G. Placing of obstructions or material in a body of water
- H. Destruction of plant life including cutting of trees
- I. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water
- J. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

Bank shall include:

- A. The portion of the land surface which normally abuts and confines a water body. It occurs between a water body and a vegetated bordering wetland and adjacent flood plain, or, in the absence of these, it occurs between a water body and an upland. A bank may be partially or totally vegetated, or it may be comprised of exposed soil, gravel or stone.
- B. The upper boundary of a bank is the first observable break in the slope or the mean annual flood level, whichever is lower. The lower boundary of a Bank is the mean annual low flow level.

Beach: see definition for “bank.”

Bog: see definition for “freshwater wetland.”

Brook shall be defined as a body of running water, in accordance with the definition of “stream.”

Buffer zone shall be defined as all those areas that lie within 100 feet of the boundary of any bank, freshwater wetland, flat, marsh, wet meadow, bog, swamp, vernal pool, beach, brook, stream, pond, or lake; or within 100 feet of the 100-year flood line, as determined under the Federal Emergency Management Agency (FEMA)

Freshwater wetland [Amended 10-17-2011 STM, Art. 11] shall be defined as wet meadows, marshes, swamps, bogs, areas where groundwater, flowing or standing surface water or ice provides a significant part of the supporting substrate for plant community for at least 5 months of the year; emergent and submergent plant communities in inland waters; that portion of any bank which touches any inland waters.

Notwithstanding the above, the following man-made areas shall not be considered freshwater wetlands:

- (a) basins or lagoons which are part of wastewater treatment plants;
- (b) swimming pools or other impervious man-made basins; and
- (c) individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years;
- (d) retention and detention ponds created as part of a stormwater management system.

Swamps, as used in this section, shall mean areas where groundwater is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders, ashes, azaleas, black alder, black spruce, buttonbush, American or white elm, highbush blueberry, larch, cowslip, poison sumac, red maple, skunk cabbage, sphagnum mosses, spicebush, black gum tupelo, sweet pepperbush, white cedar, willow.

Wet meadows as used in this section, shall mean areas where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all, of the following plants or groups of plants: blue flag, vervain, thoroughwort, dock, false loosestrife, hydrophilic grasses, loosestrife, marsh fern, rushes, sedges, sensitive fern, smartweed.

Marshes as used in this section, shall mean areas where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums, bladderworts, bur reeds, buttonbush, cattails, duck weeds, eelgrass, frog bits, horsetails, hydrophilic grasses, leatherleaf, pickerel weeds, pipeworts, pond weeds, rushes, sedges, smartweeds, sweet gale, water milfoil, water lilies, water starworts, water willow.

Lake shall be defined as a body of water with a surface area of 10 or more acres, either artificial or natural.

Marsh See definition for “freshwater wetland.”

Person shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the

extent subject to Town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

Pond [Amended 10-17-2011 STM, Art. 11] Any open body of fresh water with a surface area observed or recorded within the last ten years of at least 10,000 square feet. Ponds may be either naturally occurring or man-made by impoundment, excavation, or otherwise. Ponds shall contain standing water except for periods of extended drought. Periods of extended drought for purposes of this definition shall be those periods, in those specifically identified geographic locations, determined to be at the "Advisory" or more severe drought level by the Massachusetts Drought Management Task Force, as established by the Executive Office of Environmental Affairs and the Massachusetts Emergency Management Agency in 2001, in accordance with the Massachusetts Drought Management Plan (MDMP).

Notwithstanding the above, the following man-made bodies of open water shall not be considered ponds:

- (a) basins or lagoons which are part of wastewater treatment plants;
- (b) swimming pools or other impervious man-made basins; and
- (c) individual gravel pits or quarries excavated from upland areas unless inactive for five or more consecutive years.

Stream shall be defined as any body of running water, including brooks, continuous or intermittently flowing, moving in a definite channel in the surface of the ground.

Swamp: see definition for "freshwater wetland."

Vernal pool shall be defined as a vernal pool certified by the Massachusetts Natural Heritage and Endangered Species Program.

However, the Wetlands Protection Act regulations allow the local conservation commission to protect the wildlife habitat value of any resource area when it is demonstrated to be important to wildlife. This demonstration can be through the presentation of clear scientific evidence (such as that required for official certification) at any time during the public hearing process.

NHESP Potential Vernal Pool Metadata: Synopsis of the PVP data layer
-December 2000

OVERVIEW

This datalayer identifies the locations of potential, unverified, vernal pool habitat. Vernal pools are small, shallow ponds characterized by lack of fish and annual or semi-annual periods of dryness. Vernal pool habitat is extremely important to a variety of wildlife species including some amphibians that breed exclusively in vernal pools, and other organisms such as fairy shrimp which spend their entire life cycles confined to vernal pool habitat.

Potential vernal pools visible on aerial photographs were interpreted and digitized on the MassGIS. This datalayer does not include every vernal pool in Massachusetts. Many vernal pools have not been identified due to unfavorable conditions in the landscape topography, pool physiography and/ or photograph quality. Furthermore, vernal pool habitat occurs in a wide variety of landscape settings, including forested swamps, bogs, and other wetlands. Vernal pools within these settings were not typically interpreted, but are nonetheless legitimate and valuable vernal pools. Also, field verification of

all potential vernal pools in this study will identify errors such as the inclusion of features that are not actually vernal pools.

Potential vernal pools identified in this survey are not to be confused with Certified Vernal Pools.

Data pursuant to the official “Guidelines for the Certification of Vernal Pool Habitat” must be collected in the field and presented to the Massachusetts Natural Heritage & Endangered Species Program to obtain official certification for a vernal pool. Potential vernal pools identified in this survey do not receive protection under the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.00), or under any other state or federal wetlands protection laws.

PVP versus CVP

Potential vernal pools (PVP) identified in this survey are not to be confused with certified vernal pools (CVP). Evidence of amphibians or invertebrates using a vernal pool, in addition to proof that the pool does not support an established, reproducing fish population must be presented to the Natural Heritage & Endangered Species Program for certification to obtain official standing as a certified vernal pool under state wetlands protection laws. Potential vernal pools identified in this survey do not automatically receive protection under the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.00), nor under any other state or federal wetlands protection laws that have specific language protecting certified vernal pools. However, the Wetlands Protection Act regulations allow the local conservation commission to protect the wildlife habitat value of any resource area when it is demonstrated to be important to wildlife. This demonstration can be through the presentation of clear scientific evidence (such as that required for official certification) at any time during the public hearing process.

It is important to note that there are considerable differences in the precision with which the locations of vernal pools are mapped in both the potential vernal pool and certified vernal pools data layers. The potential vernal pools identified by aerial photo interpretation are actually located with much greater precision than the points representing certified vernal pools in the MassGIS. Potential vernal pools are digitized at a scale of approximately 1:12,000 on rectified orthophotographs. At that scale, points representing potential vernal pools have a precision equal to less than +/- 15 feet or so from the center of an interpreted pool. Note that as the view of a map in the data viewer is zoomed in to larger and larger scales, the point representing a potential vernal pool will migrate away from the true center of the pool because the point was drawn at 1:12,000 scale. Certified vernal pools are currently digitized by generating a latitude and longitude number measured on a paper 1:25,000 scale USGS topographic map. Measurements made on these maps have a precision of approximately +/- 50 feet in any direction. Therefore, when comparing the PVP layer to the CVP layer there may well be some disagreement between the two points representing the same vernal pool. It may appear that the two layers do not match up when looking at points representing the same pool. The local conservation commission is sent copies of the maps that are submitted to the NHESP for certification. To be certain

about the location of a certified vernal pool relative to potential vernal pools that you might be working with, visit the conservation commission office and ask to view the file they received from the NHESP when the pool was certified. In addition, the layers are not exactly the same; some certified vernal pools can not be seen on the aerial photographs (for various reasons) and are therefore not included in the PVP data, and the vast majority of potential vernal pools have not been certified.

So please take care in interpreting the differences in the PVP and CVP datalayers, understanding that there will be inconsistencies between the two, both real and perceived.

Vernal pool protection in Massachusetts

Massachusetts has long been one of the most progressive states in the nation in protecting wetlands. It has been a leader in the protection of vernal pools through implementation of regulations and programs that have resulted in the identification and regulation of more than 2000 of these important wildlife habitats. Vernal pools are protected under the Massachusetts Wetlands Protection Act regulations (310 CMR 10.00), Surface Water Quality Standards (314 CMR 4.00), subsurface sewage disposal regulations (Title 5: 310 CMR 15.000) and the Forest Cutting Practices Act regulations (304 CMR 11.00). Many communities across the Commonwealth have also enacted additional protection through local bylaws (see Appendix A) that can significantly increase the protection of vernal pools beyond that which state regulations provide.

Wetlands Protection Act. Prior to 1986, the wildlife habitat function of wetlands was not protected by the Massachusetts Wetlands Protection Act (WPA, M.G.L. c.131 §40). Revisions to the Act in 1986 added wildlife habitat as a protected “statutory interest” to be considered when permitting work in and around wetlands. Vernal pools were recognized as important but often overlooked wildlife habitats. However, their protection was not made automatic because “it would be unfair to applicants to require them to conduct difficult, timely, expensive, and often inconclusive searches for possible vernal pools” (Wetlands Protection Act Regulations Preface, 1987). Thus, the vernal pool certification program was developed for use with the Wetlands Protection Act regulations to identify and map vernal pools that meet established physical and biological criteria. The program is administered by the Natural Heritage & Endangered Species Program (NHESP) of the Massachusetts Division of Fisheries and Wildlife. The

certification program was developed to inform applicants, conservation commissions and regulators of the occurrence of vernal pool habitat in advance of project proposals.

Through the Massachusetts Wetlands Protection Act regulations, local conservation commissions regulate building and development that is proposed within and adjacent to wetlands across the state. The Act protects wetland functions, referred to as the “interests of the Act.” Its regulations (310 CMR 10.00) define wetland resource areas, the inland and coastal wetlands that fall under the jurisdiction of the Act, and establish presumptions of significance for each resource area. These presumptions establish the interests of the Act that are supported by each jurisdictional wetland type. Presumptions of significance are rebuttable upon a clear showing, through the presentation of scientific evidence, that a wetland resource area functions in a manner that is inconsistent with the presumptions in the regulations for that wetland type. All jurisdictional inland wetlands except Isolated Land Subject to Flooding (ILSF) and portions of Bordering Land Subject to Flooding (BLSF) are presumed significant to the protection of wildlife habitat. ILSF is defined as “isolated depression or closed basin [wetlands] without an inlet or an outlet” that, at least once a year, “confine standing water to a volume of at least 1/4 acre-feet and to an average depth of at least six inches.” Since ILSF does not carry a presumption of significance to wildlife habitat, it cannot be protected for the wildlife habitat interest unless it is shown, by a preponderance of evidence, that it is significant to that interest. The official vernal pool certification program was originally developed to document cases where ILSF and BLSF were functioning as vernal pool habitat, and therefore significant to the protection of the wildlife habitat value protected by the Act. It is notable that in the years since 1987, the NHESP has found no instance where an ILSF does not function as vernal pool habitat.

In collaboration with biologists and regulators, the NHESP developed the official vernal pool certification program. Criteria were established for the documentation of the physical and biological characteristics of vernal pool habitat consistent with the definition in the regulations. The process typically involves volunteer effort in the documentation of the physical and biological characteristics of vernal pool habitat and submission to the NHESP for review. If the vernal pool meets the requirements of the official *Guidelines for the Certification of Vernal Pool Habitat*, the NHESP certifies the pool and notifies the local conservation commission and the Massachusetts Department of Environmental Protection’s (DEP) Regional Office. Biennially, the NHESP creates and distributes maps with the locations of certified vernal pools for use by town conservation commissions, DEP staff, and project applicants to be able to identify certified vernal pools during the permitting process.

The NHESP certifies any depressional area where vernal pool indicator species are documented, provided that it holds water for at least 2 months during the spring and summer of most years and is free of established fish populations. However, certification of a vernal pool does not mean that the pool is automatically protected by the Wetlands Protection Act

regulations; certified vernal pools are not themselves jurisdictional wetlands. If a certified vernal pool does not occur within a wetland protected by the Act, there is no jurisdiction over that pool, and the pool is therefore not protected under the Wetlands Protection Act. However, when a certified vernal pool falls within a jurisdictional wetland (e.g., ILSF or Bordering Vegetated Wetland), the regulations protect the pool and *up to* 100 feet beyond its boundary, referred to as the “vernal pool habitat.” The vernal pool and associated “habitat” must exist within the boundaries of a jurisdictional wetland; no upland areas are protected under the Wetlands Protection Act (there is an exception to this under the Rivers Protection Act, discussed below). The NHESP defines the boundary of vernal pools, wherever they occur, as the maximum observed or recorded extent of flooding in a confined basin depression, or evidence of the same (e.g. leaf staining, etc.).

The regulations protect the wildlife habitat value of a certified vernal pool through general performance standards for proposed projects (310 CMR 10.57(4)(a)3 and (b)3). There is no threshold, or minimum size project, that is presumed to have no impact on certified vernal pool habitat, and no alteration of vernal pool habitat is permissible that would “impair [the resource area’s] capacity to provide important wildlife habitat functions.” Therefore, any project that would alter a certified vernal pool must demonstrate that there would be no substantial reduction in the pool’s capacity to provide food, shelter, migratory and breeding areas, and overwintering areas for amphibians, or food for other wildlife. No changes to the topography, soil structure, plant community composition and structure, or hydrologic regime are permissible if, after 2 growing seasons, the habitat functions listed above would be substantially reduced.

Rivers Protection Act. The Wetlands Protection Act was again amended in 1996 (originally proposed as a separate Act, the Rivers Protection Act was ultimately passed as an amendment to the WPA), establishing a new wetland resource area called the Riverfront Area that extends 200 feet from the banks of perennial streams. The regulations (revised 1997) for this new resource area include specific protection for vernal pools, both certified and not. Where a vernal pool within the Riverfront Area is certified prior to the filing of a Notice of Intent, there is a strict performance standard that prohibits any project that will have any adverse effect on the wildlife habitat value of the vernal pool. For vernal pools that are not certified, yet are identified with evidence from a competent source during project review, a project must have “no significant adverse impact” on its ability to provide vernal pool habitat.

Specific standards for uncertified vernal pools are a departure from the vernal pool protection under the remainder of the Wetlands Protection Act regulations.

The Riverfront Area encompasses all lands within 200 feet of perennial streams. The wildlife habitat value of the entire 200 foot-wide Riverfront Area may be protected under 310 CMR 10.58. Therefore, unlike the protection provided to the wetland resource areas by the remainder of the Act, the provisions for Riverfront Area allow protection of the important habitat functions of uplands adjacent to vernal pool habitat. A growing body of research indicates the tremendous importance of upland areas to wetland-dependent wildlife populations (Burke and Gibbons, 1995; Dodd and Cade, 1998; Semlitsch, 1998). Surrounding uplands provide critical non-breeding habitat for animals that are largely terrestrial after completing their larval stage. Both vernal pools and adjacent uplands that occur within the Riverfront Area are protectable. Protection of uncertified vernal pools and adjacent uplands were important developments in the protection of vernal pool habitat developed under the Riverfront provisions of the Wetlands Protection Act. All vernal pool habitat, certified or not, within the Riverfront Area is protected, as is the associated upland, non-breeding habitat occurring within the 200 foot Riverfront Area.

Surface Water Quality Standards. The current Massachusetts Surface Water Quality Standards (314 CMR 4.00) were adopted in 1990 by the DEP's Division of Water Pollution Control to protect public health and enhance the quality and value of the water resources of the Commonwealth. The Standards implement the Massachusetts Clean Water Act (M.G.L. c.21, §26-53), "which directs the Division to take all action necessary or appropriate to secure to the Commonwealth the benefits of the Federal [Clean Water] Act. The objective of the Federal Act is the restoration and maintenance of the chemical, physical and biological integrity of the Nation's waters" (314 CMR 4.01(4)). Before the US Army Corps of Engineers may issue a federal Clean Water Act permit for activities proposed in "waters of the United States" (federal wetlands) that occur within the Commonwealth, a project must obtain a 401 Water Quality Certification (314 CMR 9.09). 401 Water Quality Certifications are issued by the DEP for projects that meet the requirements of the Massachusetts Surface Water Quality Standards (314 CMR 4.00).

The Surface Water Quality Standards designate certified vernal pools as Class B Outstanding Resource Waters (ORWs, 4.06(2)(a)). They are protected by antidegradation provisions (314 CMR 4.04(3)) that prohibit any new or increased discharge of pollutants. "No discharge of dredge or fill

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material shall be allowed to a [certified] vernal pool.” (314 CMR 4.06(1)(d)(11)). These regulations relate directly to the federal Clean Water Act. Therefore, the vernal pool must occur within a wetland under federal jurisdiction, and the activity proposed must also trigger federal jurisdiction. Similar to the Wetlands Protection Act, the protection provided by the Surface Water Quality Standards end at the boundary of the jurisdictional wetland, in this case a water of the United States, as determined by federal wetland delineation standards.

Title 5. Title 5 of the Massachusetts Environmental Code (310 CMR 15.000) protects certified vernal pools by establishing minimum setbacks from their boundaries for subsurface sewage disposal (septic) system components. Septic tanks must be sited at least 50 feet, and soil absorption systems (leach fields) and their reserves a minimum of 100 feet from the boundary of a certified vernal pool. The leach field setback may be reduced to 50 feet where an applicant provides hydrogeologic data that demonstrates that the location of the leach field is hydraulically down-gradient of the vernal pool.

The effective implementation of these regulations requires local boards of health to check with their conservation commission for the locations of certified vernal pools before permitting septic system plans. Title 5 only protects vernal pools certified prior to application for septic system permits.

Forest Cutting Practices Act. The Forest Cutting Practices Act regulations protect vernal pools from certain forest harvesting impacts, and include protection for both certified and uncertified vernal pool habitat. Harvesting around certified vernal pools is restricted to cutting no more than 50% of the basal area of trees within 50 feet of the pool. The regulations require that no trees or tree tops be felled in vernal pool depressions and that skidder trails not traverse them. They also prohibit their use as staging areas. Vernal pools that have not been officially certified but are located by a service forester may also be protected. The regulations contain guidelines for activities around these pools that are similar to the requirements for forestry practices performed near certified vernal pools.

Appendix B

Vernal Pool Protection - the Local Bylaw

The Massachusetts Wetlands Protection Act does not protect vernal pools that are outside of jurisdictional resource areas and does not address the upland habitat needs of terrestrial vernal pool dependent species like the spotted salamander. The exception to these shortfalls is for vernal pools found within the 200 foot “Riverfront Area” associated with perennial (permanent) streams. Vernal pools and their associated uplands, to the extent that they fall within the Riverfront Area are much more effectively protected. To address the shortcomings of the Wetlands Protection Act, many towns

throughout the Commonwealth have implemented local bylaws, administered by the conservation commission, that protect any vernal pool (officially certified or not), and upland habitat surrounding them. Some even refine their definition to include extremely small vernal pools. When properly constructed and adequately justified, bylaws are powerful tools for protecting a town's vernal pool resources along with critical upland non-breeding habitat.

Following are excerpts from the Sudbury bylaw and regulations pertaining specifically to the definition and protection of vernal pools. This bylaw is one of the most progressive and comprehensive in the state because it broadens the definition of protectable vernal pools far beyond simply those that are certified by the NHESP, and establishes the upland area surrounding vernal pools (as well as all other wetland resource areas) as a resource area protected under the bylaw. While the specific language is not necessarily applicable for all towns across the Commonwealth, the Sudbury bylaw provides useful hints and ideas for crafting a bylaw that will more effectively protect vernal pools. The complete text can be found at <http://home.att.net/~sudbury.concom/bylaw.htm>.

Contact the Massachusetts Association of Conservation Commissioners (www.maccweb.org) for additional information and assistance in developing and passing a bylaw for the protection of your town's vernal pools and other critical wetland resources.

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Town of Sudbury Wetlands Administration Bylaw (Revised June 1998)

Bylaw Section 1. Purpose

The purpose of this bylaw is to maintain the quality of surface water, the quality and level of the ground water table and water recharge areas for existing, or potential water supplies; to protect the public health and safety; to protect persons and property against the hazards of flood water inundation; to protect the community against the costs which may be incurred when unsuitable development occurs in wetland resource areas; and to provide for the reasonable protection and conservation of certain irreplaceable natural features, resources and amenities for the benefit and welfare of the present and future inhabitants of the Town of Sudbury.

Accordingly, this bylaw protects the wetlands, related water resources, and certain adjoining land areas in the Town by providing for prior review and control of activities deemed to have a significant or cumulative adverse effect upon wetland values, including but not limited to the following: protection of public and private water supply, protection of ground water, flood control, erosion and sedimentation control, storm damage prevention, avoidance of water and soil pollution, protection of fisheries, wildlife habitat, rare species habitat including rare plant species, agriculture, aquaculture, and recreation values, deemed important to the community (collectively, the “wetlands values protected by this bylaw”). This bylaw is intended to utilize the Home Rule authority of this municipality to protect additional resource areas, for additional values, with additional standards and procedures to augment those of the Wetlands Protection Act, G.L. Ch 131, §40 and Regulations thereunder, 310 CMR 10.00.

Bylaw Section 9. Definitions

The following definitions shall apply in the interpretation and implementation of this bylaw.

The term “adjacent upland resource area” shall include all lands within 100 feet of wetland resource areas as enumerated in section 2, except for perennial streams and rivers for which the adjacent upland resource area extends for 200 feet from the top of bank, and except for vernal pools, ponds under 10,000 square feet in area, and isolated land subject to flooding for which special adjacent upland resource area definitions are described below.

The term “vernal pool” shall include, in addition to that already defined under the Wetlands Protection Act, G.L. Ch. 131, §40 and Regulations thereunder, 310 CMR 10.00, any confined

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basin or depression not occurring in existing lawns, gardens, landscaped areas, or driveways which, at least in most years, holds water for a minimum of two continuous months during the spring and/or summer, contains at least 200 cubic feet of water at some time during most years, is free of adult predatory fish populations, and provides essential breeding and rearing habitat functions for amphibian, reptile or other vernal pool community species, regardless of whether the site has been certified by the Massachusetts Division of Wildlife and Fisheries. The presumption of essential habitat value may be overcome by the presentation of credible evidence which in the judgment of the Commission demonstrates that the basin or depression does not provide the habitat functions as specified in the Bylaw regulations. The adjacent upland resource area for vernal pools shall extend 100 feet from the mean annual high-water line defining the depression, or one-half of the distance between the vernal pool and any existing house foundation, whichever is smaller. In either case the adjacent upland resource area for vernal pools shall not extend over existing lawns, gardens, landscaped or developed areas.

Sudbury Wetlands Administration Bylaw Regulations Revised November 2000

Regulations Section 2. Jurisdiction

2.1 Presumption of Vernal Pool Habitat

The Bylaw presumes vernal pool habitat exists if a wetland's physical characteristics conform with those defined for vernal pools in Section 9 (Definitions) of the bylaw: [see above]

This presumptive definition for vernal pools is based on systematic field observation in the Town of Sudbury by the Sudbury Conservation Commission showing that virtually all basins that possess the above characteristics actually host breeding vernal pool species. Undoubtedly this is a particular consequence of Sudbury's semi-rural character and enduring woodlands and wetlands.

The presumption of vernal pool habitat may be overcome, however, with the presentation of credible evidence which in the judgment of the Conservation Commission demonstrates that the wetland does not provide, or cannot provide, vernal pool habitat functions.

2.1.1 Demonstrating that a Ponding Area is not a Vernal Pool

For the purposes of overcoming the presumption of vernal pool habitat the Commission will consider:

2.1.1.1 Evidence that the ponding area does not hold water for at least two continuous months in most years. As a rule of thumb the term “most years” shall mean three out of five consecutive years.

2.1.1.2 Evidence that vernal pool species do not breed or have not bred in the ponding area. The Conservation Commission shall provide explicit guidelines for this evidence.

2.1.1.3 Evidence that the ponding area could not be a viable breeding site for vernal pool species due to incompatible physical, chemical, biological, or other persistent conditions at the site in most years. Such evidence could include, without limitation, several months of pH and dissolved oxygen measurements yielding values incompatible with amphibian or reptile breeding.

2.1.2 Timing of Evidence Collection

Many of the indicators of vernal pool habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood frog chorusing only occurs between late March and May, and then only at night. Consequently, failure to find evidence of breeding must be tied explicitly to those periods during which the evidence is most likely to be available.

Accordingly, in the case of challenges to the presumption of vernal pool habitat the Conservation Commission may require that the determination be postponed until the appropriate time period consistent with the evidence being presented. The Commission may also require its own site visits as necessary to confirm the evidence.

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Regulations Section 7. Permits and Conditions

7.1 Performance Standards & Design Criteria for Adjacent Upland Resources

As stated in the Bylaw, Section 7 Permits and Conditions lands within 100 feet of wetlands resource areas (25 feet in the case of isolated land subject to flooding):

“...are presumed important to the protection of these resources because activities undertaken in close proximity to wetlands and other resources have a high likelihood of adverse impact upon the wetland or other resource, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, poor water quality, and harm to wildlife habitat.

The Commission may therefore require that the applicant maintain a strip of continuous, undisturbed vegetative cover in part or all of the 100-foot area and set other conditions on this area, unless the applicant provides evidence deemed sufficient by the Commission that the area or part of it may be disturbed without harm to the values protected by the law.”

7.2 Considerations in Setting Disturbance Restrictions.

A growing body of research evidence suggests that even “no disturbance” areas reaching 100 feet from wetlands may be insufficient to protect many important wetland resource characteristics and values. Problems of nutrient runoff, water pollution, siltation, erosion, vegetation change, and habitat destruction are greatly exacerbated by activities within 100 feet of wetlands. Thus, in general work and activity within 100 feet of wetlands should be avoided and discouraged and reasonable alternatives pursued.

Accordingly, the Conservation Commission shall begin with the presumption that lands within the adjacent upland resource of a resource are best left in an undisturbed and natural state. [Note: the Bylaw contains a number of exemptions for single family residences existing prior to July 27, 1994]

However the Commission shall designate areas of the adjacent upland resource to be suitable for temporary, limited, or permanent disturbance as appropriate when the applicant can demonstrate to the Commission's satisfaction that the proposed work or activity will not affect wetland values singularly or cumulatively and that reasonable alternatives to the proposed work or activity do not exist.

In considering designation of adjacent upland resource disturbance areas, the types of work and activities allowable, and conditions to apply, the Conservation Commission shall consider:

7.2.1 Values and Functions of the Resource Area

The quantity and quality of resource values and functions should be considered explicitly in placing conditions on adjacent upland resource work. Some isolated land subject to flooding, for example, may serve for temporary flood storage only. Minimal adjacent upland resource restrictions within several feet of the resource might be necessary only to prevent erosion.

Other isolated land subject to flooding might provide vernal pool habitat. It might also provide important flood storage capacity and intersect ground water. In this instance far stronger adjacent upland resource restrictions would be appropriate because a larger number of functions are involved and some functions, such as habitat, are more sensitive to adjacent upland resource activity and require greater protection. If rare or endangered species, such as blue spotted salamanders, were found at the site then still greater levels of restrictions would be appropriate.

7.2.3 Wildlife Habitat and Rare Species

The near-upland areas around wetland resources often play important roles in determining and maintaining the wildlife habitat values of associated wetlands. While it is common to think of the protective or "buffering" value of adjacent upland resources in terms of area undisturbed, habitat values may be equally affected by the configuration of the adjacent upland resource perimeter, the inclusion or exclusion of specific topographical and ecological features (such as an abutting sandy knoll or tree canopy), etc.

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Therefore where significant wildlife habitat values and functions are present delineation of non-disturbance areas within the adjacent upland resource shall, as is reasonable, minimize the length of perimeter to area left undisturbed, exclude fingers, islands, or other projections or indentations of the non-disturbance zone, and in general avoid delineating oddly shaped non-disturbed areas. The Commission shall give special attention to inclusion inside the no disturbance area of those topographical and ecological features that it deems important for maintaining the wildlife habitat value of the resource.

The potential presence of rare or endangered species and their specific sensitivity to adjacent upland resource activity shall be considered in determining adjacent upland resource restrictions. Evidence of the presence of such species or evidence of likely habitat shall be considered by the Conservation Commission. Prior designation of rare or endangered species habitat by the Division of Fisheries and Wildlife Natural Heritage Program is not necessary.

The Commission may consult with the Division of Fisheries and Wildlife Natural Heritage Program or other authorities as it deems necessary for guidance and recommendations.

7.2.4 No Significant Adverse Impact on Wildlife Habitat

Wildlife habitat serves a variety of functions in support of wildlife. Food, water, breeding space, shelter, security, movement and migration space, and connections to other habitat areas are all equally important. All of these wildlife habitat functions are presumed to exist in all resource areas.

Therefore in accordance with the Bylaw's fundamental purposes (see Bylaw, Section 1 above) no project may have a significant adverse impact - either project-specific or cumulative - on wildlife habitat for more than two growing seasons.

For wildlife habitat purposes, a significant adverse project-specific impact is defined as an impact caused by work in a resource area that would under reasonable assumptions (a) result in a measurable decrease in the extant wildlife populations or biological composition, structure, or richness on the site or in the vicinity exclusive of the present or future state of adjacent and nearby

properties, or (b) impair, damage, destroy, or reduce in value for wildlife purposes certain specific habitat features.

Wildlife studies have shown that direct impacts from work - filling, grading, vegetation removal, construction of barriers to movement, etc. - in resource areas can severely harm wildlife populations. For example, low stone walls bisecting a resource area can prevent amphibians that live in upland areas from reaching breeding pools, marshes, and streams. Or, removal of large snags (dead trees) can virtually eliminate nesting by barred owls, pileated woodpeckers, mink, etc. Accordingly, the Commission shall prohibit the placement of fences or other barriers to wildlife movement within and between resource areas and the destruction of specific habitat features.

Examples of protected habitat features include (but are not limited to):

- Large cavity trees
- Turtle nesting areas
- Existing nest trees for birds that reuse nests
- Beaver dams, dens, and lodges
- Mink or otter dens
- Vernal pools
- Vertical sandy banks
- Migration corridors that provide connectivity between wildlife habitats
- Sphagnum hummocks and pools suitable to serve as nesting habitat for four-toed salamanders

But indirect impacts - the effects of human activities near wildlife habitat - can have equally harmful effects. Therefore the Commission shall take into account indirect effects on a project by project basis. So, for example, no work within resource areas shall be permitted within 100 feet of existing beaver, mink or otter dens, or within 200 feet of existing osprey or great blue heron nests.

As clearly stated in Section 1 of the Sudbury Wetlands Administration Bylaw the purpose of the Bylaw is to preserve for future generations of residents the natural resources and amenities - including wildlife - we presently enjoy in Sudbury. The Bylaw protects future values as well as current ones. Therefore, the Commission must be especially cognizant of the likely cumulative impact of work within resource areas.

79 Massachusetts Vernal Pool Survey

For wildlife habitat purposes a significant cumulative adverse impact is defined as an impact that would under reasonable assumptions result in a measurable decrease in the extant wildlife populations or biological structure, composition, or richness on the site or in the vicinity taking into account the projected impacts of future projects that could be proposed in the vicinity with similar, comparable, or other significant impacts and disturbance.

This method for assessing cumulative impacts avoids the pitfall of placing an unreasonable burden of resource protection on subsequent applicants/projects in the vicinity while subsidizing those who are first to develop land. It allows the Commission to level the marginal impact of all proposed projects in the vicinity while ensuring appropriate protection - present and future - of the values and interests protected by the Bylaw.

Regulations Section 9 DEFINITIONS

9.10 Vernal Pool Species

Any species of reptile, amphibian, or invertebrate that breeds in a vernal pool. These species may be obligate or facultative.

From: [redacted] joegabe@comcast.net Friday, April 17, 2015 11:13:19 AM [redacted]

Subject: Re: Westford Asphalt Plan: Just Say No

To: [redacted] zba@westfordma.gov [redacted] dgalvin@westfordma.gov
[redacted] mgreen@westfordma.gov [redacted] mlewin@westfordma.gov
[redacted] Joe Gabriel <1joegabe1@gmail.com> [redacted] dearl@westfordma.gov
[redacted] khollister@westfordma.gov

Cc: [redacted] ckluchman@westfordma.gov [redacted] jross@westfordma.gov
[redacted] **Jeffrey Morrisette** [redacted] Carol Ann Gabriel <carol.ann.gabriel@oracle.com>
[redacted] jmangiaratti@westfordma.gov

Attachments: [redacted] Attach0.html / Uploaded File (5K)

Planning Board members, thank you for your votes this week to deny the MPC permit to Newport Materials. I hope that our concerns as residents factored into your decision.

We look forward to your continued support and enforcement of this vote.

Joe Gabriel and Family
3 Fernwood Drive

----- Original Message -----

From: Joe Gabriel
To: shazelton@westfordma.gov, kross@westfordma.gov, asweet@westfordma.gov, dsiriani@westfordma.gov, jsullivan@westfordma.gov, mgreen@westfordma.gov, mlewin@westfordma.gov, khollister@westfordma.gov, dgalvin@westfordma.gov, zba@westfordma.gov, dearl@westfordma.gov
Cc: jmorrisette@westfordma.gov, ckluchman@westfordma.gov, jross@westfordma.gov, jmangiaratti@westfordma.gov, joegabe@comcast.net, Carol Ann Gabriel
Sent: April 4, 2015 at 7:11 PM
Subject: Westford Asphalt Plan: Just Say No

Town Selectman, Planning Board and ZBA members,
Thank you for all that you do to make Westford one of the best towns in the state of Massachusetts. As a resident for almost 23 years, we've seen tremendous growth and change in the town. The people of this community are passionate about maintaining and preserving the character of this community. We all experience this enthusiasm at Town Meetings and through the many conversations we have with each other at our churches, sporting events and other informal gatherings.

With regards to the proposed Asphalt Plant, I would be surprised if you have heard any positive support from community members or Westford families for this proposal. These are the people

who will be impacted the most if this proposal is approved. The recent editorial in the April 2nd edition of the Westford Eagle summed up all the reasons why this is not a good investment for the town of Westford: the proximity of the plant to neighborhoods, schools and daycare facilities, the traffic impact and more importantly for those that live close by, the potential decline in property value. It's ridiculous to think that the town's master plan does not permit drive-through windows but allow an asphalt manufacturing plant to call Westford home.



I urge you to consider the precedent you may set for other businesses and property owners if you allow this proposal to pass. The interpretation of light manufacturing and multi-purpose use on a property could create similar "opportunities" on other properties throughout the town of Westford.


Additionally, town counsel and Judge Sands have made it clear that this is YOUR decision, not Newport's nor the courts. I am confident that you will not be distracted or deterred from threats and "bullying" such as those made by Attorney O'Reilly in his March 30 correspondence with the town, eg. several statements of "...Newport is entitled to approvals from the Planning Board and ZBA...".

Lastly, ZBA's recent decision to re-open the public hearing on this matter is egregious. There was no new information presented in the letters sent to the ZBA on the 30th of March and the vote by the board to re-open happened extremely quickly, before debate amongst board members could occur. We believe it is in the best interest of the boards to reevaluate the proceedings from this meeting and reconsider not reopening the public hearing.

Sincerely,
Joe Gabriel & Family
3 Fernwood Drive

From:  crystalisa@aol.com
Subject: 540 Groton Road / Commerce Way
To:  mhakala@westfordma.gov
Cc:  **Jeffrey Morrisette**

Friday, April 17, 2015 11:31:04 AM  

Attachments:  Attach0.html / Uploaded File (3K)

Hello Matt,

Was visiting with Chelmsford neighbors in proximity to 540 Groton Road last night. Discussion centered around why there was so much on-going activity at the property building a berm, concern was that they were already moving ahead with building the plant. I perceived this as a non-issue. However, I would like to know if they're allowed to be working throughout the night, as it was clear from Groton Road that there was considerable activity.


More importantly, there were a couple of trucks working just off Route 40, in the driveway area before the gate. This noise was quite audible all the way down in my residential neighborhood near the Oak Hill Road intersection. We asked the officer parked in the area if they were going to continue making that noise all night? He confirmed he could hear it too, and headed over to visit with them. This took place well after midnight in the early hours of this morning.

Additionally, earlier yesterday, I'm told there was heavy equipment that appeared to be working (moving earth) at the edge of the driveway/wetlands. Was there a conservation commission approval of which I'm unaware? Or is one not needed?

Can you confirm if this type of activity throughout the night is permissible?

Thank you,



Alisa Nakashian-Holsberg.

From:  **Pranay Singhal** <pranay_singhal@hotmail.com> 5/1/2015 12:39:23 PM 

Subject: Letter to ZBA for inclusion in public record of hearing on Wed, May 6

To:  **Jeffrey Morrisette**

Cc:  **Pranay Singhal** <pranay_singhal@hotmail.com>
 "seenu_dutta@yahoo.com" <seenu_dutta@yahoo.com>
 "cerebro1@gmail.com" <cerebro1@gmail.com>
 "raj@rajpriya.com" <raj@rajpriya.com>
 "mgp12@hotmail.com" <mgp12@hotmail.com>
 "teeyes3@yahoo.com" <teeyes3@yahoo.com>

Attachments:  **Attach0.html** / Uploaded File (3K)
 **Letter_ZBA_Prop_Value_Impact.pdf** / Uploaded File (96K)

Dear Mr. Morrisette,

Please find attached a letter that a group of homeowners in Westford would like to be presented to the members of the Zoning Board of Appeals, expressing our concern regarding the detrimental impact of the proposed 540 Groton Rd asphalt plant on residential property values in the neighborhood.

We request you to kindly make the attached letter part of the public record for the ZBA's public hearing on this matter, scheduled for Wednesday, May 6th at 7:30 PM at the Blanchard Middle School venue.

Please let me know if you have any questions related to this request.

Sincerely,

Pranay Singhal
2 Perham Circle, Westford, MA 01886

April 28, 2015

Town of Westford
Zoning Board of Appeals
Town Offices
55 Main Street
Westford MA 01886

RE: Concern Regarding Detrimental Impact of the Proposed 540 Groton Rd Asphalt Plant on Residential Property Values in the Neighborhood

Honorable Members of the Zoning Board of Appeals:

The purpose of this letter is to draw your attention towards our concerns regarding a likely detrimental impact on residential property values in the vicinity of the proposed asphalt plant that Newport Materials is seeking to construct and operate at the 540 Groton Road site.

We are a group of homeowners who have recently purchased our houses in the Greystone Estates residential development that is located close to the 540 Groton Road site. During the process of buying our present homes, we all took into consideration the operations of Newport Materials as well as those of Fletcher Granite in the surrounding vicinity. However, absent from that consideration was the presence of an asphalt plant producing on an average 1,500 tons of finished asphalt a day, having a capacity to store 60,000 gallons of liquid asphalt and 10,000 gallons of fuel oil onsite, and operating 250 daily trips of heavy trucks to ferry materials in and out of the facility on public roadways in the neighborhood. Also absent from that consideration was the pollution, noise and health concerns arising out of this new, additional operation.

We collectively agree that had the proposed asphalt plant been in operation at the time we bought our houses, we would have made very different purchase decisions. We would either have decided not to buy a house in this neighborhood, or would have used this as a bargaining position – knowing that there would be fewer buyers interested in the property owing to concerns regarding the active asphalt plant in the vicinity. We collectively agree that our purchase offers would have been 10-25% lower under those circumstances. We would have made those decisions regardless of any studies or claims put forth by Newport Materials regarding the safety and environment cleanliness of that plant. The net result would have been a lower purchase price. With a few such sales in the development, it would not have taken long for overall home values to come down – given that most of the Greystone Estates properties are considered “comparable” by appraisers.

There is no reason to believe that a future prospective homebuyer would approach Greystone Estates any differently in light of the presence of an operational asphalt plant in the vicinity. Therefore, the impact of the proposed asphalt plant on home values in the entire Greystone Estates neighborhood

should be treated as an undeniable consequence that will quickly become reality should the proposed asphalt plant be allowed to be constructed and operated.

The Greystone Estates development comprises of a total of 220 comparable single family homes on Russell's Way, Perham Circle, Curren Drive, Danley Drive, Morrison Lane, Caldwell Drive, and Chandler Road. With these single family homes assessed at a median value of \$550,000 per the 2015 Town of Westford assessment records, the net present median assessed value of all homes in our development is approximately \$121,000,000. With the 2015 real estate tax rate of \$16.24 per \$1,000 assessed value, the net median real estate tax revenue for the Town of Westford from the Greystone Estates development for 2015 is approximately \$1,965,000.

Assuming a future buyer, in whose shoes we have been very recently, were to approach a purchase in this development in the same manner as we would have, had the asphalt plant been in operation at the time of our purchase, it would be fair to expect the construction and operation of the proposed asphalt plant to lead to a 10-25% decline in property values across this entire development. It would also be fair to say that if this were to be the case, the town could face a decline of approximately \$196,500 to \$491,000 in the annual residential property tax revenue generated from this development.

Therefore, besides facing the possibility of a decline in our personal home equities, we also face the possibility of an increase in property tax rates to make up for the resulting shortfall in tax revenues. That increase would be borne by all town residents.

We urge you to carefully consider the potential negative fiscal impact of the proposed asphalt plant on all town residents, in light of a potential decline in residential property values in the surrounding neighborhood.

Sincerely,



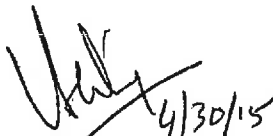
Pranay Singhal
2 Perham Cir, Westford, MA
Home Purchased: 9/20/2012



Srivatsan Sathyamurthy
5 Perham Cir, Westford, MA
Home Purchased: 6/23/2011



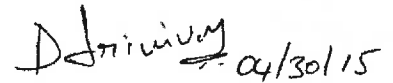
Sridhar Adakamalla
6 Danley Dr, Westford, MA
Home Purchased: 4/2/2013



Anandaraj Velmurugan
5 Morrison Ln, Westford, MA
Home Purchased: 8/17/2012



Mahesh Patil
14 Chandler Rd, Westford, MA
Home Purchased: 5/20/2011



SRIINIDHI DUTTA
10 PERHAM CIR, WESTFORD, MA
HOME PURCHASED 05/16/2015



Planning Board
Town of Westford
55 Main Street
Westford, MA 01886

Record of Proceedings and Notice of Decision
Application PB 1504 SP MCP

Applicant: Douglas C. Deschenes, Attorney

Property Owner: Richard DeFelice, 540 Groton Road, LLC & Newport Materials, LLC

Property Location: 540 Groton Road, Westford, MA 01886

Zoning District: Industrial A (IA)

Assessors Map and Parcel: Map 048 Parcel 0011, Lots 0234, 0248 & 0249

Application Submitted: January 5, 2015

Public Hearing Dates: January 21, 2015
February 12, 2015
March 2, 2015
March 16, 2015
April 6, 2015
April 13, 2015
April 14, 2015

Planning Board Vote: Denied (1-4-0 to approve, therefore a denial)

Filed with Assistant Town Clerk: April 24, 2015

Appeal Period Ends: May 14, 2015
(20 days after filed with Town Clerk)

APR 24 2015
WESTFORD

DECISION

At its meeting on **April 14, 2015**, the Planning Board voted 1-4-0 to APPROVE a **Special Permit** for a **Major Commercial Project**, thereby **DENYING** the petition for lack of attaining a supermajority (4 out of 5) vote. The application was submitted by Attorney Douglas C. Deschenes in response to a remand from Land Court for the case Newport Materials, et al v. Planning Board of Westford, et al. 10 MISC 429867. The application was for the addition of a bituminous concrete manufacturing facility (hereinafter "Asphalt Plant") at 540 Groton Road (also known as 20 Commerce Way) to other uses. The Board authorized the Planning Staff to reduce a Decision to writing with benefit of input from Town Counsel, and to submit said Decision with the Office of the Town Clerk no later than close of business on April 24, 2015.

BACKGROUND

1. In 2009 – 2010, the Planning Board considered applications from the Applicant to construct an Asphalt Plant at 540 Groton Road. The Board held 21 hearings over the course of a year and in April 2010 denied the Site Plan Review and two Special Permit applications on the basis that the proposed plant did not qualify as a Light Manufacturing Use in accordance with the definition in the Zoning Bylaw (Section 10.2). That denial was appealed by the Applicant, and following 4 years of litigation at Land Court, including a 3-day trial in November 2013, a Decision was issued that sent the case back to the Planning Board.
2. Therefore, the current applications are being considered by the Planning Board on “remand” from Land Court in accordance with the Court’s decision for the case Newport Materials, et al v. Planning Board of Westford, et al. 10 MISC 429867 (LC Decision). In that Decision, the Land Court directed that “... *the Board’s assessment of any such resubmitted plans shall be made in accordance with the findings and rulings contained in this decision.*” (Decision, page 32). Therefore, the December 8, 2014 Court Decision, as well as a subsequent January 6, 2015 Order on the Board’s Motion for Clarification and the transcript of the January 6, 2015 hearing on that motion are incorporated into the Planning Board’s record.
3. In summary, the LC Decision held that the original proposal by the Applicant would not qualify as a Light Manufacturing use and therefore upheld the Board’s denial of the original applications on that basis. However, the Land Court identified modifications to the proposal that would, in the opinion of the Land Court, qualify the proposed asphalt plant as a Light Manufacturing use.
4. The Land Court further rejected the Applicant’s contention that the proposed Asphalt Plant would not require a Major Commercial Project (MCP) special permit, finding that the anticipated traffic generation from the proposal would itself trigger the requirement for a MCP special permit. Accordingly, the Land Court did not need to address the Board’s contention that a property with multiple uses must be treated as a whole (with all uses on the property and their attend traffic generation, parking and square footage being considered cumulatively) for purposes of determining whether a MCP special permit is required.
5. Under the LC Decision, the Applicant was directed to resubmit applications for Site Plan Review (SPR), Special Permit for Major Commercial Project (SP MCP) and Special Permit for Water Resource Protection Overlay District (SP WRPOD). In addition, the Applicants filed for a Stormwater Management Permit (SWM) under General Bylaw 147 and the Planning Board’s Rules and Regulations. The Applicant also filed an application for a Special Permit under Section 9.3 of the Zoning Bylaw. On January 16, 2015, the Applicant requested withdrawal of the Special Permit submitted to the Planning Board under Section 9.3.
6. As directed by the Court, the Applicant submitted a Variance application to the Board of Appeals for multiple principal uses on a lot. The Applicant also submitted a Special Permit application to the Board of Appeals for extension of non-conforming use under Section 3.6.2 of the Zoning Bylaw. The Applicant also filed an application for a Special Permit under Section 9.3 of the Zoning Bylaw to the Board of Appeals. On January 16, 2015, the Applicant requested withdrawal of the Special Permit application submitted to the Board of Appeals under Section 9.3. On January 16, 2015, the Applicant submitted to the Board of Appeals a request for a Variance from the term “quiet” in the definition of Light Manufacturing, as that term has been construed by the Land Court in the LC Decision, so that they might exceed the noise criteria in Section 9.3A, which sets maximum Noise levels.

7. In accordance with the LC Decision, the Applicant must obtain a SP MCP, even if they obtain a Variance to allow multiple principal uses on the lot and/or a Special Permit from the Board of Appeals to extend a non-conforming use.
8. In April of 2011, the Department of Environmental Protection (DEP) issued a Modified Clean Air Permit. The modified DEP permit was the result of a settlement between the Applicant and 47 Chelmsford residents. The DEP permit sets specific conditions including but not limited to:
 - a. Specific emission limits and pollution control devices for 4 different emission causing elements of the project (DEP page 6);
 - b. 60,000 tons of asphalt per month/300,000 tons per 12 month period;
 - c. Operational hours of 6:00 a.m. to 7:00 p.m. Monday through Saturday, and not between December 15 and March 15;
 - d. Requirements for noise studies after the plant is operational;
 - e. Requirements for testing of emissions with DEP personnel present 120 days after operational;
 - f. Specific performance measures relating to air quality and monitoring of air quality; and
 - g. Specific equipment and operational procedures.
9. The LC Decision directed the Applicant to resubmit a site plan application that addressed four factors, which are:
 - a. Incorporate sound attenuation barriers as recommended by the Applicant's acoustical expert;
 - b. Provide that there will be five or more employees at the project;
 - c. Request a Variance to operate more than one principal use on the site; and
 - d. Address the issue of the project's power source(s) and show the Board that the power source is only electric or is another power source that is "substantially noiseless and inoffensive".
10. The Land Court clarified at a hearing on January 6, 2015 that the Board has discretion to review the SP MCP and the SP WRPOD as allowed by state land use law and at that hearing the Court made clear that it was not ordering the Board to approve the Special Permits.
11. The Board of Appeals is not a party to the Land Court litigation and is NOT under the Land Court's jurisdiction for the pending applications for Variance and Special Permits.

PROJECT SUMMARY

1. On January 5, 2015, the Applicant submitted applications for a Site Plan Review, a Special Permit relative to the Water Resource Protection Overlay District (WRPOD), a Special Permit for a Major Commercial Project (MCP), a Stormwater Management Permit and a Special Permit under Section 9.3 of the Zoning Bylaw for multiple uses. The applications included a narrative, a site plan, and technical information relating to the project.
2. Upon receipt of the applications, the first public hearing on the proposal was noticed in the Lowell Sun on January 7, 2015 and January 14, 2015. On January 9, 2015, notices were sent to abutting property owners within 300 feet of the subject site, which included both Chelmsford and Westford Residents.
3. On January 21, 2015, prior to the opening of any public hearings, the Applicant withdrew the application for Special Permit under Section 9.3 of the Zoning Bylaw. The Planning Board opened a concurrent public hearing for the two Special Permits, Site Plan Review and Stormwater Management Permit on January 21, 2015.

4. The Applicant seeks to construct an Asphalt Plant which is accompanied by an existing material processing yard and two rock crushers. These facilities are located in Westford on approximately 4 acres of a 115-acre site (approximately 92 acres located in Westford, 23 acres in Chelmsford). Twenty-two (22) acres are developed with a solar array which is leased by the Applicant to Nexamp/Carthartes Investments.
5. The subject property is accessed from Groton Road by a private way (Commerce Way) which is proposed to be developed as a 22-foot wide paved road. The Applicant's plans show the approximate location of a 20-foot wide emergency access way through an adjacent property (Fletcher Quarry) to Groton Road. No easement documents for the emergency access road were provided during the public hearing.
6. The proposed Asphalt Plant consists of the following components based on site visit and according to the March 26, 2015 plan set, Sheet SP Site Plan:
 - a. 12' x 36' Operator Control Center on skids;
 - b. Six 10' x 14' Cold Feed Bins with a loading ramp from the materials yard;
 - c. Conveyor belts between the bins, vibrating screener and the processing unit (Gencor 400);
 - d. 5' x 14' Vibrating screen between the bins and the Gencor 400;
 - e. Recycled Asphalt Product (RAP) stockpile and ramp in materials processing yard;
 - f. Seven (7) stockpile areas for bituminous concrete raw materials (sand, RAP, crushed stone with concrete bin walls;
 - g. Crushing Plant and Radial spreader with RAP stockpile (within fenced area);
 - h. Office trailer and storage trailer;
 - i. Gencor 400, a machine that receives the ingredients from conveyor belts, which is controlled remotely and mixes the products together;
 - j. An 86' conveyor belt that takes the mixed product from the Gencor 400 to the top of the storage silos;
 - k. Four (4) 200-ton silos (68' in height) that allow the hot asphalt to load into trucks that pull underneath where materials load into the trucks from the top;
 - l. Tank Farm with two 30,000 gallon indirect fired Asphalt Cement (AC) vertical tanks with unloading pumps (36 feet in height);
 - m. HYCGO Gencor 100 hot oil heater with expansion tank stand;
 - n. Lawn area, landscaping;
 - o. Total of 8 parking spaces: 5 parking spaces and 1 handicapped space adjacent to Operator Control Center with ramps and sidewalk with curbing and 2 spaces near office trailer;
 - p. Security fence with four entrance/exit gates;
 - q. Two truck scales near the silos;
 - r. One water well with a water line to the fire cisterns;
 - s. Proposed utilities – natural gas line to provide fuel for the burners in the Gencor 400;
 - t. Site lighting with 20' fixtures around the asphalt manufacturing facility;
 - u. Dumpster;
 - v. Two 30,000 gallon fire cisterns;
 - w. Ground mounted signs including visitor, truck and directional signs;
 - x. Stormwater management facilities such as water quality swales; and
 - y. A 10,000 gallon aboveground storage tank for Number 2 fuel oil.
7. Plan Sheet OSP Overall Site Plan shows that the proposed facility is 2.73 acres and is shown with a dashed line and does not include the materials processing yard. However, Attorney Douglas Deschenes' letter of April 13, 2015 notes **"Therefore, all areas shown inside the**

fenced area are exclusively for the bituminous concrete facility.” This statement contradicts plan sheet OSP, and confirms that as shown on Sheet SP, the proposed Asphalt Plant is the area within the fence and therefore the Crushing Plant and materials processing yard **is included** as part of the Asphalt Plant. Refer to Plan Sheet SP included in this decision.

8. The Planning Board had the benefit of two peer reviewers for the proposed project, James Barnes of Acentech, a sound expert, and Robert Michaud of MDM, a Professional Traffic Engineer.
9. The Planning Board considered the application in accordance with Sections 8.1, 9.3A, 9.4 of the Westford Zoning Bylaw and General Bylaw 147 and the Stormwater Rules and Regulations over the course of seven (7) public hearings, as listed above. At said hearings, an opportunity was given to all those interested to be heard in favor or opposition to said petition. During the course of the public hearing sessions, dozens of residential neighbors of the project site spoke in opposition to the project. On April 14, 2015, the Board voted to close the public hearing.
10. The written record contains additional materials including, but not limited, to the following information. The entire written record is made part of this record of decision.
 - a. Application materials;
 - b. Plan entitled “SITE PLAN ASPHALT MANUFACTURING FACILITY 540 GROTON ROAD (ROUTE 40) WESTFORD MASSACHUSETTS” prepared by LandTech Consultants Inc. dated April 6, 2009, with latest revision date of March 26, 2015 and containing the following sheets:
 - 1) Title Sheet
 - 2) Existing Conditions Plan
 - 3) Existing Conditions Plan
 - 4) Overall Site Plan
 - 5) Site Plan
 - 6) Construction Plan
 - 7) Construction Plan
 - 8) Construction Plan
 - 9) Site Utilities and Lighting Plan
 - 10) Erosion Control Plan
 - 11) Erosion Control Plan
 - 12) Details and Sections
 - 13) Details and Sections
 - 14) Details and Sections
 - 15) Storm Water Pollution Prevention Plan (SWPP)
 - 16) Pre-Development Drainage Map
 - 17) Post Development Drainage Map
 - 18) Proposed Plant Layout (by others)
 - 19) General Component Elevations (by others)
 - 20) Tank Farm – Plan and Side Elevations (by others)
 - 21) Emergency Access Easement Plan
 - 22) Entrance Modification Plan Last revised 4/9/15
 - c. Supplemental Data Report entitled “Asphalt Manufacturing Facility 540 Groton Road Westford, MA” prepared by LandTech Consultants, Inc. dated April 6, 2009.

- d. "Appendix G Stormwater Report "Asphalt Manufacturing Facility 540 Groton Road Westford, MA" prepared by LandTech Consultants, Inc., dated April 9, 2009, last revised October 27, 2009 30, 2014.
- e. "Acoustical Evaluation and Revised Acoustical Evaluation" prepared by Cavanaugh Tocci Associates (CTA) dated January 2, 2015, supplemented on January 23, 2015 and March 10, 2015.
- f. Selected Materials from 2009 – 2010 Planning Board hearings GENERAL CONTENT
 - Bituminous Asphalt Manufacturing Process
 - April 15, 2009 memo from Police Chief Thomas McEnaney
 - May 20, 2009 memo from Eric Fahle, Chair Conservation Commission
 - June 15, 2009 memo from Planning Board members Fred Palmer and Kevin Borselli, about site visit to Portsmouth, NH asphalt plant
 - July 16, 2009 letter from Douglas C. Deschenes regarding comments from Chelmsford residents and Chelmsford Board of Selectmen
 - July 16, 2009 responses to questions. Author unknown but appears to be from applicant
 - July 20, 2009 memo from Planning board member Dennis Galvin regarding site visit to Portsmouth, NH asphalt plant
 - July 31, 2009 letter from LandTech Consultants in response to Woodard and Curran peer review
 - October 30, 2009 letter from LandTech Consultants in response to Woodard and Curran peer review
 - October 30, 2009 letter from Douglas C. Deschenes answering questions raised at earlier public hearing
 - November 25, 2009 letter from Woodard and Curran Site Plan Review Letter #3
 - December 11, 2009 letter from Douglas C. Deschenes regarding current uses on the site
 - January 13, 2010 letter from Alicia Barton McDevitt, Assistant Secretary Executive Office of Energy and Environmental Affairs regarding petition for Fail-Safe Review
 - March 18, 2010 letter from Douglas C. Deschenes in response to questions from resident Don Boesel
 - March 31, 2010 letter from Douglas C. Deschenes in regarding mitigation
- g. Letter from Attorney Douglas C. Deschenes, regarding Supplemental Sound Information received February 10, 2015.
- h. Peer Review of Acoustical Evaluation" prepared by Acentech for the Town of Westford, dated February 12, 2015.
- i. "Traffic Impact Analysis, Proposed Bituminous Concrete Manufacturing Facility, Westford MA" prepared by Vanasse & Associates, Inc., dated February 20, 2015.
- j. Letter and supplemental Information from Attorney Douglas C. Deschenes, including Exhibits A through U, received March 10, 2015
- k. Transportation Peer Review Letter from Robert Michaud of MDM, received March 11, 2015
- l. Abbreviated Staff Notes for the Planning Board, March 12, 2015.

- m. Staff Report to Board of Appeals, March 12, 2015.
- n. Letter from Attorney Thomas Reilly and exhibits received March 30, 2015.
- o. Letter from Attorney Thomas Reilly regarding use of Executive Sessions, received March 30, 2015.
- p. Letter from Attorney Jonathan Silverstein and Joint Motion to Extend Remand, received March 30, 2015.
- q. Transcript of January 6, 2015, Land Court Hearing.
- r. Letter and supplemental information and revised plans from Attorney Douglas C. Deschenes, received March 27, 2015.
- s. Letter from Attorney Douglas C. Deschenes, requesting that the Planning Board grant permission for multiple principal uses on the site, received April 1, 2015.
- t. Acoustical Consulting Services, letter from Acentech regarding further sound analysis, received April 2, 2015.
- u. "DRAFT Issues for Consideration" dated April 6, 2015, from Planning Staff.
- v. Letter from Attorney Thomas Reilly regarding Issues for Consideration, received April 8, 2015
- w. Letter from Richard DeFelice, Newport Materials, received April 8, 2015.
- x. PowerPoint Presentation "Newport Materials" received April 8, 2015.
- y. Letter from Attorney Jonathan Silverstein, in response to Attorney Reilly's letter of April 8, 2015 received April 10, 2015
- z. Letter from Westford Public School Superintendent Everett V. Olsen Jr. received April 8, 2015.
- aa. Entrance Modification Plan, Land Tech Consultants, last revised April 9, 2015
- bb. DRAFT Special Permit MCP Decision – Approval, April 10, 2015.
- cc. DRAFT Special Permit MCP Decision – Denial, April 10, 2015.
- dd. DRAFT Site Plan Review Decision – Approval, April 10, 2015.
- ee. DRAFT Special Permit WRPOD Decision – Approval, April 10, 2015.
- ff. DRAFT Stormwater Management Permit – Approval, April 10, 2015.
- gg. A" Quantitative Assessment of Potential Health Risks Due to Operations of the Proposed Newport Materials Asphalt Plant, Westford MA," originally received by Planning Board December 29, 2009, received April 13, 2015 at the Planning Board hearing.
- hh. "Review of Greenman-Pederson, Inc. Traffic Study Evaluation of Newport Materials Trucking Sound" prepared by CTA, originally received by Planning Board June 11, 2009, received April 13, 2015 at the Planning Board hearing.
- ii. Memorandum to the Planning Board by Dennis Galvin, regarding Portsmouth Site Visit, originally received by Planning Board July 20, 2009, received April 13, 2015 at the Planning Board hearing.
- jj. Letter from Attorney Douglas C. Deschenes to the Board of Health and attachments, regarding response to Woodard and Curran mobile source emissions, received April 13, 2015 at the Planning Board hearing.
- kk. Letter from Attorney Douglas C. Deschenes, regarding the Draft Decisions, received April 13, 2015 at the Planning Board hearing.
- ll. Letter from Everett V. Olsen, Jr. regarding Miller School Air Quality, dated January 21, 2010, and received April 14, 2015.
- mm. Letter from Attorney Thomas Reilly regarding mitigation, received April 14, 2015.

- nn. Numerous (over 55) comments from the public, Town of Chelmsford Board of Selectmen in opposition to the Asphalt Plant.
- oo. One comment from a resident in support of the Asphalt Plant.

FRAMEWORK OF DECISION

1. Land Court Remand

- a. The Planning Board (Board) considered the application for an **MCP Special Permit** under remand pursuant to the (LC Decision).
- b. While the Board issued approvals for the Site Plan Review, the Stormwater Management Permit and the Special Permit for Water Resource Protection District, these approvals are based upon the requirements and holdings of the LC Decision. The Board has not yet had the opportunity to appeal from the LC Decision, as final judgment has not entered in the litigation, and it does not relinquish its rights to appeal the LC Decision. Of particular note, but without limiting the foregoing, the Board notes that the LC Decision holds that the proposed use would constitute Light Manufacturing allowed (with an MCP Special Permit) in the IA Zoning District. The Planning Board does not concur with this holding but is obligated by the LC Decision to accept it for purposes of this remand.
- c. In its January 5, 2015, submittal the Applicant included *"All filings previously made to the Board associated with the above referenced permits are hereby incorporated by reference into this filing."* (Deschenes, cover letter January 5, 2015). Twelve days later (January 17, 2015 staff report) planning staff made its first request to the Applicant to submit information into this Board's record so that the Board would have information needed to make its decision, specifically, requesting that the Applicant identify important information because the previous record from April 2009 to April 2010 includes over 6,000 pages of material. On March 27, 2015, (70 days after the staff request) the Applicant submitted a list of 133 items it felt should be considered by the Board (Deschenes, March 27, 2015, Exhibit A). The documents included on this list range from a 1981 document to an April 2011 document. On March 30, 2015, Applicant submitted 169 pages of duplicate information that was already part of this Board's record (Reilly, March 30, 2015). Finally, on April 13, 2015, approximately 24 hours prior to the Board's closing of the hearing, the Applicant submitted a letter and specific reports and materials from the 2009 – 2010 Board hearings, a total of 162 pages of technical materials (Deschenes April 13, 2015). It is noted that a majority of the current Board's members were not on the Board during the 2009-2010 hearing sessions. Similarly, neither of the Board's current professional planning staff was employed by the Town at that time.

2. Major Commercial Project (MCP) Special Permit

- a. Section 9.3A of the Zoning Bylaw and other relevant sections of the Bylaw, including, but not limited to, Section 3.1.2 sets forth the regulatory framework for the MCP.
- b. An MCP is required **whenever one of the MCP criteria is triggered on a site**. For example, if a site has an existing 10,000 square foot building and the property owner wants to expand by another 10,000 square feet, this expansion requires an MCP because the total site would have 20,000 square feet, which exceeds the 15,000 square feet threshold, even though each segment of the project is under the 15,000 square foot threshold. In other words, the MCP thresholds apply to a property as a whole, and the various uses of that site may not be segmented into smaller individual projects to avoid MCP review.
- c. Therefore, the Board considers the entirety of the subject property within the Town of Westford as being subject to the MCP and the conditions thereof.

3. Materials processing is part of the proposed Asphalt Plant.

- a. The materials processing facility, which recycles asphalt, brick and concrete, was approved as a USE by the Board of Appeals in 2009, and the RAP production portion of that use is an integral part of the proposed Asphalt Plant operations.
 - i. The Department of Environmental Protection Permit (DEP Permit) includes both the Asphalt Plant and the rock crushing and materials storage facility. DEP regulated these uses together, and it makes sense for the Board to do so as well.
 - ii. The site plan shows that the materials processing area and the asphalt plant are contained within a single fenced area and joined by internal driveways.
 - iii. There may be shared trips in which a truck delivering recycled asphalt for crushing at the materials processing facility may then be loaded with asphalt from the silos.
 - iv. The Applicant has represented that up to 50% of the Recycled Asphalt Product (RAP) used for manufacturing of asphalt will be provided from the materials processing facility. The DEP permit allows up to 40% of the materials that make up the final bituminous concrete (asphalt) product to be composed of RAP. Given that the Applicant has this material in hand at the materials processing facility, it is common sense to conclude that the Applicant will use this supply in the production of asphalt.
 - v. Asphalt manufacturing components such as sand, fine sand, aggregate and RAP are shown on the site plan in the materials processing yard area.
 - vi. The Asphalt Plant is designed to operate with RAP, which is manufactured in the materials processing facility and also other ingredients for asphalt such as sand, fine sand, and aggregate are stored within the materials processing yard area.
 - vii. The materials processing facility exists without benefit of a Site Plan Review (SPR). The materials processing plant did not receive a Site Plan Review (SPR) approval in 2009 from the Planning Board. Section 9.4.1 of the Zoning Bylaw states that *"The following types of activities and uses are subject to site plan review by the Planning Board. 1. Construction, exterior alteration, exterior expansion of a nonresidential or multifamily structure or tower, or change in use..."* Therefore SPR for the materials processing facility is required.
- b. Attorney Douglas Deschenes' letter of April 13, 2015 notes, "Therefore, all areas shown inside the fenced area are exclusively for the bituminous concrete facility." This statement contradicts plan sheet OSP, and confirms that as shown on Sheet SP, the proposed Asphalt Plant is the area within the fence and therefore the Crushing Plant and materials processing yard **is included** as part of the proposed Asphalt Plant. Refer to Plan Sheet SP included in this decision.

4. Zoning relief required by LC Decision.

The LC Decision, as clarified by the Court at a Hearing on January 6, 2015, requires a Variance for multiple principal uses on the subject property. The Applicant submitted a petition for Variance to the Zoning Board of Appeals (BOA). On March 25, 2015, the BOA closed its public hearing and denied the Variance petition for multiple principal uses on one site. On March 31, 2015, the BOA voted to re-open its public hearing on the petition, so that this matter is still pending. The BOA's hearing is scheduled to be re-opened on May 6, 2015. The issuance of any approvals/permits by the Planning Board does not obviate the Applicant from securing the necessary Variance relief from the BOA.

FINDINGS - Special Permit Criteria for Major Commercial Project – Section 9.3A:

The Applicant failed to convince a supermajority of the Board that the project satisfied the performance criteria for a Major Commercial Project. In reaching the decision to deny, the opposing members based their decision, in whole or in part, on the following:

Land Court Decision – Criteria relative to Light Manufacturing

The Planning Board considered the following factors from the LC Decision and found that the Applicant had met the following tests as summarized in the LC Decision (page 32):

1. *Incorporate sound attenuation barriers as recommended by the Applicant's acoustical expert;*
Applicant's revised plan set included a sound attenuation wall and sound source barriers as recommended by the Applicant's acoustical expert, though it should be noted that the Board's peer review acoustical engineer opined that the sound attenuation barrier protecting the western property line could cause the project to violate the applicable performance standard at the eastern property line.
2. *Provide that there will be five or more employees at the project;*
Applicant provided an affidavit that there will be five or more employees at the project and the site plan accommodates 5 employees.
3. *Request a Variance to operate more than one principal use on the site;*
Applicant applied for a Variance for more than one principal use on the site. While the Board of Appeals (BOA) did not approve the Variance, the BOA has decided to reopen the public hearing on the matter, which is scheduled for a May 6, 2015 hearing.
4. *Address the issue of the project's power source(s) and show the Board that the power source is only electric or is another power source that is "substantially noiseless and inoffensive".*
Applicant provided additional information about the project's power source which the Board found to confirm (strictly within the construct of the LC Decision) that the proposed machinery is powered by electricity, although the fuel source of the plant is natural gas with Number 2 fuel oil as the backup fuel.

Requested Waivers from Standards of 9.3A

1. Applicant requested two waivers from the MCP standard 9.3A.4.2. Noise. Ambient Noise Level.
No person shall operate or cause to be operated any source of sound in a manner that creates a sound which exceeds 70 dBA or 10 dBA above ambient, whichever is lower, when measured at the property boundary of the receiving land use.
 - a. The Applicant sought a waiver from the construction of the 35-foot high by 1,200 foot long wall and the performance standards. Specifically, the applicant requests the ability to cause sound that is 75dBA (and 32 dBA above ambient) at the westerly property boundary. The applicant made two waiver requests: 1) to not build the wall at all, and 2) to build an 8-foot wall.
 - b. **The Board voted 1-4-0 to grant the waiver not to construct any wall**, thereby denying the request. The Board determined that adequate protection of the adjacent property from the possible noise of the Asphalt Plant was needed and that submittal of the current property owner of said adjacent lands did not adequately protect that property in perpetuity. The Board noted that other quarries in Westford have been redeveloped under Chapter 40B as large residential housing developments and that other future commercial uses would be adversely affected by the noise levels generated by the Asphalt Plant. Furthermore, the Board

determined that the attenuation of noise at the westerly boundary is required in order for it to be considered "Light Manufacturing".

- c. **The Board voted 1-4-0 to grant the waiver to construct an 8-foot wall**, thereby denying the request. The Board determined that adequate protection of the adjacent property from the possible noise of the Asphalt Plant was needed and that submittal of the current property owner of said adjacent lands did not adequately protect that property in perpetuity. The Board noted that other quarries in Westford have been redeveloped under Chapter 40B as large residential housing developments and that other future commercial uses would be adversely affected by the noise levels generated by the Asphalt Plant. Furthermore, the Board determined that the attenuation of noise at the westerly boundary is required in order for it to be considered "Light Manufacturing".

9.3A.4 Standards.

The following standards shall apply to applications for special permits for Major Commercial Projects or Major Retail Projects:

1. Lighting.

- A. *Shielding. All outdoor light fixtures shall be shielded so as to meet the goals of this Section.*
- B. *Light Trespass. Direct light from the light source is to be confined within the property boundaries.*

The Applicant shows "low sodium yard lights" on the site plan sheets and the lights are 20-foot high downward facing fixtures. While the Applicant did not provide an illumination lighting plan showing illumination levels, the Applicant states that the proposed project is located 1,400 feet from the public way (Groton Road) and 1,360 feet from the nearest residence. Because the location of the lighting is not visible from the public way, and the fact that there was no evidence presented to the contrary, nor did anyone or Board member raise a concern about light trespass or the need for further attention to lighting, ***the Board found that this criterion is met.***

2. Noise.

- A. *Ambient Noise Level. No person shall operate or cause to be operated any source of sound in a manner that creates a sound level which exceeds 70 dBA or 10 dBA above ambient, whichever is lower, when measured at the property boundary of the receiving land use.*

The Board found that there was insufficient information provided by the Applicant to demonstrate compliance with this criterion including, but not solely limited to, the following reasons:

1. Significant sound attenuation in the form of wall 35 feet high x 1200 feet long was proposed to meet the Land Court findings and performance standard to attenuate sound on the western property line. Additionally, the Applicant provided for sound attenuation at the source (i.e. sound barriers to be installed around/on the equipment).
2. The Applicant refused to provide critical noise information relating to the two (2) existing rock crushers on the lot. Therefore, the Board was without benefit of an accurate and thorough sound study, and lacked the requisite information so as to make an informed decision. The Applicant maintains that only the proposed Asphalt Plant is before the Board for consideration; however, the Major Commercial Project applies to the totality of a site, and use of the site may not be segmented so as to avoid review.
3. Plan Sheet OSP Overall Site Plan shows that the proposed Asphalt Plant is 2.73 acres and is shown with a dashed line and does not include the materials processing yard. However,

Attorney Douglas Deschenes' letter of April 13, 2015 notes ***"Therefore, all areas shown inside the fenced area are exclusively for the bituminous concrete facility."*** This statement contradicts plan sheet OSP, and confirms that as shown on Sheet SP, the proposed Asphalt Plant is the area within the fence and therefore the Crushing Plant and materials processing yard ***is included*** as part of the Asphalt Plant. Refer to Plan Sheet SP included in this decision.

4. One day prior to the Board's closing of the hearing, Applicant provided sound information about noise generated by the projected heavy truck traffic CTA June 11, 2009 letter. The Board did not have time for its acoustical expert to review this 29 page technical letter from the Applicant. The CTA letter states EPA regulatory maximums, ***"For trucks manufactured after the 1986 model year, the maximum pass-by sound level must not exceed 83 dBA when measured 50 feet from the centerline of travel at a speed not more than 35 mph, and must not exceed 87 dBA for a speed greater than 35 mph."*** The Board found that these federal maximums might allow for truck noise from the proposed Asphalt Plant that exceeds the Town's Zoning Bylaw standards. The Board further notes that there are residences located within 50 feet of the roadway that the proposed 250 additional vehicle trips (most of them heavy truck trips) would follow each day. This analysis was inadequate to address concerns related to vehicle noise:
 - This study assumed 40 mph operation for site vehicles on Groton Road, which would not be the case given site locus, along with acceleration factors for vehicles approaching the facility, or exiting the facility loaded and accelerating past residential properties;
 - Noise under full acceleration was not used as part of the analysis;
 - Many residences along this portion of Groton Road have limited setbacks from roadway pavement, increasing perceptions of noise emissions;
 - Overall vehicle noise modeling was not adequate, as it appears newer industry models exist with more detail on truck classification and acceleration models;
 - The 2009 CTA report on truck noise provided an analysis of the GPI traffic study, but the current Board considered a report by Vanasse and Associates; and.
 - Use of so-called "Jake Brakes" was an expressed concern by residential neighbors of the project and was not addressed by the Applicant.
4. There was extensive testimony from residents of the surrounding neighborhood that truck noise would be substantially detrimental to their quality of life. These residents described interference with their use and enjoyment of their properties from the existing materials processing facility (which is permitted up to 150 truck trips per day per the special permit issue by the ZBA), and described concerns regarding the effects of more than doubling (to 400) the number of heavy truck trips permitted to access the materials processing yard / Asphalt Plant each day. As perceived from abutting property boundaries, there was only **last minute information** provided from the Applicant in response to concerns about sound associated with proposed routine heavy truck traffic, either from within the subject property, or as trucks traveled along Groton Road (Route 40) and into the site. The last minute timing of the submittal to the Board did not allow the Board adequate time to review this information nor have the benefit of expert peer review of this technical data.
5. The Applicant represented at the public hearing that asphalt trucks exiting the facility would be 24-ton or less (less for smaller residential jobs). However, the submitted VAI study table shows a relative average that 25% of vehicles could be 32-ton trucks, which

appears to be a different vehicle classification than used in the previous studies that were submitted.

6. No vehicle noise analysis was presented for vehicles transferring raw materials from the neighboring property to site operations. The Applicant represented that up to 50% of raw materials could come from the neighboring property, which is much closer to residential properties on Russell's Way and neighborhood recreation fields on Russell's Way.
7. Respecting the Court's findings about noise measurements, the Board found that the easterly boundary was at +9 dBA above ambient (again, just considering the asphalt plant and not the associated crushers), and was not satisfied that the addition of noise from multiple rock crushers or heavy truck traffic would not cause noise levels at the easterly boundary to exceed the +10 dBA threshold. It should be noted that the acoustical experts testified that a 5dBA increase in sound pressure is "clearly perceptible", whereas a 10 dBA increase is perceived as a **doubling** of the ambient sound.
8. Sound attenuation for the westerly boundary could create reflective sound to the easterly property line, and per estimate of 3dBA additive, even with absorptive materials, and even without rock crusher noise added, this would be above the performance threshold.
9. Rock crusher(s) sound information was not provided, despite numerous requests by the Board and its acoustical engineer, but was noted in both the DEP permit as part of the operation, and should be considered as part of MCP review of the site in totality.
10. For the above reasons, the **Board found that the proposal does not meet this criterion.**

3. Landscaping.

- A. Street Buffer Strip.** *Except for a required sidewalk, a landscaped buffer strip at least twenty (20) feet wide, continuous except for approved driveways, shall be established adjacent to any public road to visually separate parking and other uses from the road. The buffer strip shall be planted with grass, medium height shrubs, evergreens and shade trees having a minimum four inches in caliper measured four feet from ground level planted at least every thirty (30) feet along the road frontage. Evergreens and shade trees shall be at least eight feet in height at time of planting.*

The subject site is 115 acres, and the proposed Asphalt Plant is 1,400 feet from the public way (Groton Road). There is a large wetland area and vegetation across most of the Site's Groton Road frontage. **The Board found that this criterion does not apply.**

- B. District Buffer Strip.** *A continuous landscaped buffer strip of at least ten (10) feet in width shall be provided and maintained in perpetuity between business and industrial districts and any residential districts and/or property lines. The landscape buffer strip shall be of a density to substantially screen the development in question from view, along the zoning district line in question. Plantings of various approved evergreen species are encouraged and shall be planted at a minimum height of six (6) feet.*

The site is bordered by Industrial A on all sides in Westford, and the Chelmsford Town Line. **The Board found that this criterion does not apply.**

- C. Large Parking Areas.** *Parking areas containing over 20 spaces shall have at least one shade tree per ten (10) parking spaces, such tree to be a minimum of 2½ inches in diameter and located either in the parking area or within 10 feet of it. At least 5% of the interior of the parking area shall be maintained with landscaping, including trees, in landscape islands or plots.*

The proposed parking area includes parking for 6 cars. **The Board found that this criterion does not apply.**

- D. Fencing.** *Fencing may be allowed in lieu or in conjunction with plantings. Design and height of*

such fencing, with accompanying landscaping, shall be subject to the approval of the Planning Board.

The Applicant proposes six foot (6') high chain link fencing around the asphalt plant and a portion of the materials processing yard. Due to the disturbed nature of the site, and the lack of visibility from all but one abutting property owner (Fletcher Quarry), the Board found that the proposed fence is adequate. ***The Board found that this criterion is met.***

- E. Retaining Walls.*** *Retaining walls shall be constructed to a maximum height of four (4) feet. If site conditions require elevation changes of greater than four (4) feet, retaining walls shall be terraced and landscaped.*

The Applicant proposes retaining walls that are 6 feet in height which shall be designed by a duly licensed Professional Engineer. The Applicant does not show terraced and landscaped retaining walls on the plans. Due to the disturbed nature of the site, and the lack of visibility from all but one abutting property owner (Fletcher Quarry), the need for terraced retaining walls does not appear to be needed. The Board notes that Building Code requires that any wall over 4' high shall be designed by duly licensed Professional Engineer. ***The Board found that this criterion does not apply.***

- F. Berms.*** *The Planning Board may require a berm or berms in appropriate circumstances to promote the goals of this section.*

Due to the disturbed nature of the site, and the lack of visibility from all but one abutting property owner (Fletcher Quarry), the Board found that berms are not needed for landscape or screening purposes. However a berm is indicated to be built on the site plans to the east of the proposed Asphalt Plant. The Applicant is conditioned to construct the project in accordance with the site plans. ***The Board found that this criterion does not apply.***

- G. Screened Areas.*** *Exposed storage areas, refuse disposal facilities, machinery, service areas, truck loading areas, utility buildings and structures and other similar uses shall be screened from view from neighboring properties and streets using dense, hardy evergreen plantings, or earthen berms, or wall or tight fence complemented by evergreen plantings.*

Due to the disturbed nature of the site, and the lack of visibility from all but one abutting property owner (Fletcher Quarry), the Board found that there is no need for screened areas for landscape purposes. ***The Board found that this criterion does not apply.***

- H. Maintenance.*** *All landscaping features, structures and areas shall be properly maintained. Dead shrubs or trees shall be replaced within one growing season as a condition of approval.*

The Applicant proposes landscaped areas and the Board considered conditions such that landscaping shall be maintained over the life of the project. ***As conditioned, the Board found that this criterion is met.***

4. Stormwater Management.

- A. Consistency with the Massachusetts Stormwater Management Policy.** *All development shall comply with the Department of Environmental Protection's (DEP) Stormwater Management Policy (including Phase II Stormwater Management requirements), to ensure that the rate of surface water run-off from the site shall not be increased after construction.*

The proposed project is subject to a Stormwater Management Permit from the Town in accordance with Planning Board Rules and Regulations. The Town's Engineering Department and 2009 peer reviewer found that the project's stormwater management provisions are adequate and suggested specific conditions relative to the Operation and Maintenance of all Stormwater facilities. **The Board found that as conditioned, the Board found that this criterion is met.**

- B. Conservation Commission.** *Where applicable, no special permit shall be issued unless a report shall have been received from the Conservation Commission or the Planning Board's agent that the storm drainage system is consistent with DEP Stormwater Management Policy and that there is sufficient storm drainage capacity to meet the flow demands of the proposed development on-site, and where applicable, without causing surge in those storm drainage lines which serve the project and are consistent with the standards of the Town.*

The Town's Engineering Department and 2009 peer reviewer found that the project's stormwater management provisions are adequate and suggested specific conditions relative to the Operation and Maintenance of all Stormwater facilities. **The Board found that, as conditioned, this criterion is met.**

5. Site Development Standards.

- A. Land Disturbance.** *Site/building design shall preserve natural topography, reduce unnecessary land disturbance and preserve natural drainage on the site to the extent possible.*

Due to the disturbed nature of the site, that a majority of the proposed structures are on "skids" and that the new stormwater drainage will improve conditions on the site, **the Board found that this criterion is met.**

- B. Site Design.** *Placement of buildings, structures, or parking facilities shall relate to the site's scenic qualities and shall blend with the natural landscape.*

The Board noted that the proposed project is located 1,400 feet from a public road, is only visible to an adjacent industrial use (Fletcher Quarry), and the portion of the Quarry adjacent to the proposed Asphalt Plant is highly disturbed; due to these factors, **the Board found that this criterion does not apply.**

- C. Archeological or Historical Resources.** *The Planning Board may require Applicants to submit the proposed development plan to the Westford Historical Commission and/or the Massachusetts Historical Commission for review and comment regarding possible archaeological or historical resources on the site.*

The Applicant maintains that "there is nothing of Historical or Archaeological nature currently existing within the project site" and no evidence of any such resources was presented during the public hearings. **The Board found that this criterion does not apply.**

- D. Preservation of Existing Vegetation.** *Priority shall be given to the preservation of existing stands of trees, trees at site perimeter, contiguous vegetation with adjacent sites (particularly existing sites protected through conservation restrictions), and specimen trees.*

There is a portion of the site near the entrance that is mapped by the Natural Heritage Endangered Species Program (NHESP) as estimated habitat of endangered species. NHESP

staff found that the proposed project would result in "no take" of endangered or threatened species. Also, because the proposed development leaves areas of existing vegetation intact in undeveloped portions of the site and that there is little vegetation on the proposed location of the proposed Asphalt Plant, **the Board found that this criterion is met.**

- E. Finished Grade.** *Finished grades should be limited to no greater than a 3:1 slope, while preserving, matching, or blending with the natural contours and undulations of the land to the greatest extent possible.*

The Board considered conditions of approval that would limit grading on the site in accordance with this standard, and as conditioned, the site development (including the emergency access road) shall not have slopes that exceed 3:1. **The Board found that, as conditioned, this criterion is met.**

- F. Topsoil.** *A minimum of 6" of topsoil shall be placed on all disturbed surfaces which are proposed to be planted.*

Because the site plans indicated that areas shown as lawn will be seeded with 6" of top soil, **the Board found that this criterion is met.**

6. Pedestrian and Vehicular Access; Traffic Management

- A. Access.** *To the extent feasible, access to nonresidential uses and structures shall be provided via one of the following (i) Access via a common driveway serving adjacent lots or premises; (ii) Access via an existing side street; (iii) Access via a cul-de-sac or loop road shared by adjacent lots or premises;*

Access to the nonresidential uses on this site is via Commerce Way, a private driveway off of Groton Road (Route 40) which is shown on the site plans as a 22 foot wide paved private road. The Applicant also proposes improvements to the entrance area of Commerce Way and Groton Road, which will require action by the Conservation Commission.

The Applicant proposed to design and construct an emergency access road within a proposed easement through an adjacent property (Fletcher Quarry) that provides an alternate access for Emergency Vehicles in case Commerce Way is blocked. The Board considered several conditions of approval that relate to the Commerce Way access and to the emergency access and the Board found that **as conditioned, the Board found that this criterion is met.**

- (1) Access via roadways abutting residential districts shall be avoided where possible. The Board found that this criterion does not apply.*
- (2) Access and egress to a development with frontage on more than one street shall be in a manner that causes the least impact to the surrounding neighborhoods as determined by the Planning Board.*

The only access to a public way is the entrance of Commerce Way and Groton Road. **The Board found that this criterion does not apply.**

- (3) Access shall be obtained from existing driveways where such access is safe and efficient. Where two or more access ways now exist, the Planning Board may limit access to the more safe and efficient location.*

Access to the nonresidential uses on this site is via Commerce Way, a private driveway off of Groton Road (Route 40) which is shown on the site plans as a 22-foot wide paved private road. The Applicant also proposes improvements to the Commerce Way entrance area at Groton Road, which will require review by the Conservation Commission. The Board considered several conditions of approval that relate to the Commerce Way access. **As conditioned, the Board found that this criterion is met.**

- B. **Curb Cuts.** *Curb cuts shall be limited to the minimum width for safe entering and exiting, and shall in no case exceed 30 feet in width unless waived by the Planning Board for commercial truck traffic.*

No new curb cuts on a public way are proposed, as stated above, access to the nonresidential uses on this site is via Commerce Way, an existing private driveway off of Groton Road (Route 40) which is shown on the site plans as a 22 foot wide paved private road. The Applicant also proposes improvements to the entrance area of Commerce Way and Groton Road, which will require action by the Conservation Commission. The Board considered several conditions of approval that relate to the Commerce Way access. **As conditioned, the Board found that this criterion is met.**

- C. **Interior Circulation.** *The proposed development shall ensure safe interior circulation within its site by accommodating and separating pedestrian, bike ways, and vehicular traffic and ensure safe access to all users of the buildings.*

Interior circulation related to the proposed Asphalt Plant is adequate to handle the proposed truck traffic and is contained within a fenced area with paved and gravel interior roadways. The Applicant has not shown pedestrian or bicycle facilities on their plans, but the board found that such facilities were not necessary given that only 5 employees would be employed at the proposed Asphalt Plant. Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, **the Board found that this criterion is met.**

- D. **Transportation Plan Approval.** *The proposed development shall be subject to a Transportation Plan approved by the Planning Board. The Transportation Plan shall be prepared by a qualified traffic consultant and consist of the following information:*

1. *A plan showing the proposed parking, loading, and traffic circulation within the site; access and egress points; and other features related to traffic generated by the proposed use.*
2. *A **Transportation Impact and Access Study (TIAS)**, detailing the expected traffic impacts. For proposed development in excess of 25,000 gross square feet or in excess of 20 peak hour vehicle trips, the required traffic study shall substantially conform to Town of Westford Guidelines for Preparation of a Transportation Impact Assessment and the Institute of Transportation Engineers' "Traffic Access and Impact Studies for Site Development: A Recommended Practice," latest edition. The Planning Board shall approve the geographic scope and content of the study. In addition, the Applicant shall submit a Transportation Demand Management (TDM) plan tailored to the specific uses and the geographic location of the site.*
3. *Proposed mitigation measures, if any, such as left-turn lanes, roadway widening, signage, signalization of intersections.*

The Applicant's site plans show the required elements such as parking loading and circulation. The Applicant submitted a TIAS by Vanasse & Associates which was reviewed by MDM Transportation Consultants, the Town's peer reviewer. The Town's peer reviewer found that the TIAS was conducted conformed to industry standards and the Town's published TIA guidelines.

The primary feature of the TIA is not mitigation to make offsite improvements, but it is the Applicant's stipulation to limit trips to and from the Asphalt Plant to a daily maximum of 250. The Board found that the on-site materials processing facility is also limited to 150

trips per day (by prior approval of the Board of Appeals). The Board considered conditions of approval to monitor trips related to the Asphalt Plant and Materials Processing facilities in and out of the site, specifically **the Board found that the proposed condition requiring video monitoring of the Commerce Way entrance at Groton Road was a reasonable way to monitor trips, though labor-intensive and difficult to enforce.** Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, and **as conditioned, the Board found that this criterion is technically met.**

E. Level of Service Maintenance or Improvement.

The suggested Level of Service (LOS) of intersections impacted by the traffic generated the development shall be:

For newly constructed floor area, LOS "D" or better

1. *For all other projects subject to special permit- present LOS if present level of service is "D" or lower, where such suggested standard is not met, or where a proposed project will result in an increase of 10 seconds of delay to a signalized intersection, the PB may require the Applicant to provide detailed plans (including reconstruction concepts) that when implemented would result in a intersection LOS as set forth above, or a return to existing conditions, whichever is applicable.*

According to the Applicant's traffic study, LOS for left -turn egress from Commerce Way onto Groton Road is projected to be at E/F during the AM. and PM peak hours. Therefore the Board concluded that the standard *"For newly constructed floor area, LOS "D" or better"* is not met because E/F is a lower level of service than D. Additionally, the Board found that the projected LOS of E/F will create lengthy queues of heavy trucks. These idling heavy trucks will result in additional emissions. **The Board found that the proposal does not meet this criterion.**

- F. Dangerous Intersections.** *The Planning Board may require safety improvements for any net increase in traffic volumes of 10% or more at an intersection that has an accident history of more than 5 accidents in the last three years for which data is available.*

Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, **the Board found that this criterion does not apply.**

- G. Sight Distance.** *Adequate sight distance shall be provided and maintained at all access locations, egress locations, and all intersections affected by the Development. At a minimum, these site distances shall meet the stricter of the Massachusetts Highway Department and American Association of State Highway Transportation Officials standards for safe-stopping sight distances as detailed in the Town of Westford Traffic and Pedestrian Safety Manual.*

Relying on review of the proposed facility by MDM Transportation Consultants, the Town's peer reviewer, **the Board found that this criterion is met.**

H. Pedestrian and Bicycle Safety.

- (1) *All development and redevelopment shall provide for pedestrian and bicyclist connections on the property, and allow for possible future connections with adjoining properties, where deemed appropriate by the Planning Board.*
- (2) *Pedestrian access shall connect to all building entrances with further connections to local pedestrian arteries.*
- (3) *All road and intersection widening and new traffic signals or modification of existing traffic signals required as part of a Development or Redevelopment shall include appropriate bicycle and pedestrian accommodation.*

(4) *The Planning Board may require proposed development and redevelopment to provide sufficient rights-of-way on their properties to accommodate expected needs for bicycle and pedestrian use in conformance with the general guidelines in the Route 110 Master Plan, Sidewalk Master Plan, and other Master Plans as adopted by the Town.*

(5) *If the property abuts a public bikeway/ right-of-way, a paved access route to the bikeway may be required.*

The Applicant did not request a waiver from these standards, but points out that there will be minimal pedestrian and bicycle traffic from the Asphalt Plant or generated by the project uses (either employees or customers). While the Applicant stated that they would construct a separate pedestrian facility for employees, the submitted Site Plan does not indicate a separate pedestrian facility, and therefore employees will use the Commerce Way roadway to move from the Asphalt Plant and materials processing facility to the restrooms located in the existing office building. Based on the limited number of employees and the lack of projected pedestrian and bicycle use by customers, ***the Board found that these criteria do not apply.***

H. ***Location of Parking Areas.*** *Where feasible, the Planning Board may require parking areas to be located to the side or behind buildings so as to provide an appropriate setting for the building within the context of the site and neighborhood.*

Due to the fact that the proposed facility is located 1,400 feet from the public way, ***the Board found that this criterion does not apply.***

I. ***Traffic Calming Features.*** *Traffic calming measures such as crosswalks, bike lanes, rumble strips and landscaped islands may be required.*

Due to the fact that the proposed facility is located 1,400 feet from the public way and that improvements are proposed for the Commerce Way entrance at Groton Road, no further improvements are required. ***The Board found that this criterion does not apply.***

Summary 6. Pedestrian and Vehicular Access; Traffic Management

Because the Board found that criterion E. is not met, it found that the proposal does not meet the overall Criterion of "Pedestrian and Vehicular Access; Traffic Management."

7. Community Character.

A. ***Compatibility with Neighborhood.*** *The location, size and design, building materials, and operating characteristics of the proposed development shall be compatible with abutting properties, natural and built environment in the area and the surrounding neighborhood, with consideration to be given to the following:*

(1) *harmony in scale, bulk, massing, architectural character, building materials, placement and density; (Refer to draft approval decision)*

(2) *generation of traffic and the capacity of surrounding streets; (Refer to draft approval decision)*

(3) *consistency with the goals and objectives of the Town of Westford Master Plan and with any other applicable plan that has been adopted by the Town.*

1. Testimony was provided by the Applicant that the proposal would likely result in approximately thirty-seven (37) additional vehicle trips during the Weekday Morning Peak Hour (thirty-five (35) of which are anticipated to be large trucks), and twenty-five (25) additional vehicle trips during the Weekday Evening Peak Hour (twenty-three (23) of which are anticipated to be large trucks). Although the Applicant's traffic engineer

testified that the proposal would not result in any significant impacts on motorist delays, the Board found that, relative to traffic, neighborhood character is defined by more than the mere operational status of a given roadway.

2. Testimony was received from numerous residents concerned that the introduction of the additional, consistent heavy truck traffic would result in a substantial detriment to the character of the neighborhood. It was noted that environmental studies to date relative to noise, odor and overall air quality focused on the proposed Asphalt Plant itself, and did not account for the effects (noise associated with acceleration/deceleration of large trucks, odors and air pollutants associated with the cargo and/or exhaust from large trucks, additional minor delays associated with trucks entering (inclined entrance ramp) or exiting nearby Route 3, a perpetual spike in heavy truck traffic during early morning hours, etc.) as perceived by the neighborhood, particularly those neighboring properties containing dwellings.
3. Neighbors also described existing dangerous truck movements into and out of the project site and the nearby entrance and exit ramps to Route 3, and expressed concern that this would be exacerbated by more than doubling the number of heavy truck trips accessing the site. Therefore, four (4) members of the Board found that the Applicant failed to prove that the proposed Asphalt Plant would not adversely affect neighborhood character and social structure, and concluded that the proposed use would not be compatible with the surrounding neighborhood due to heavy truck traffic.
4. Concern about the effect of vehicle emissions on the community as detailed below.
 - a. In response to concerns related to mobile emissions, 2009 analysis data was provided.
 - b. This data was inadequate to address concerns related to vehicle emissions and concerns related to health and safety:
 - Vehicle class as part of this study appears inadequate, given apparent updates to EPA device classification, and VAI study which shows up to 25% of asphalt laden vehicles (in a 1,500 day) could be 32-ton, and all vehicles bringing raw material over public roadways are 32-ton trucks
 - Updated AERMOD and vehicle emissions (MOBILE 6.2) models appear to be available subsequent to these report submissions, including vehicle classification and acceleration models, and was not utilized.
 - c. The Board found that the projected LOS of E/F will create lengthy queues of heavy trucks. These idling heavy trucks will result in additional emissions.
 - d. While commentary related to vehicle emissions carrying raw material from abutting sites to the site property was mentioned, the vehicle counts and modeling represented (GPI 11/2/09) appears to represent only vehicle trips from the site driveway. CEI (12/09) comments on additional mobile sources but also used older models.
 - e. Emissions study results (GPI 11/2/09) "assumes a peak operation condition (2,000 tons processed per day)". However, the Applicant stated (in public hearing) that depending on weather conditions (rain), production could higher on some days to offset, while maintaining an average monthly production of 1,500 tons per day. This could result in significantly higher asphalt output on particular days, increasing concentrated mobile emissions.
5. For the reasons above, ***the Board found that the proposal does not meet this criterion.***

8. Utilities; Security; Emergency Systems.

- A. *Projects may not overburden Town infrastructure services including water, gas, electricity and waste water systems. Building design may make use of water-conserving plumbing and minimize the amount of stormwater runoff through the use of best management practices for storm water management. Further, building may be designed to make use of natural and energy resources efficiently in construction, maintenance, and long term operation of the building, including supporting mechanical systems that reduce the need for mechanical equipment generally and its location on the roof specifically. Compliance with the Leadership in Energy and Environmental Design (LEED) certification standards and other evolving environmental efficiency standards shall be encouraged.*

The Applicant provided detailed information in the March 27, 2015 submittal regarding the adequacy of existing utilities to serve the proposed Asphalt Plant including sanitary wastewater facilities in the existing office building for the 5 employees, and an existing well, that will provide water to the two 30,000 gallon Fire Cisterns, a fire alarm system, an underground natural gas line and existing overhead electric power and telephone supply lines that will be supplied to the site. The site is secured by fencing and the Applicant proposes fire alarms and training for the Westford and Chelmsford Fire Department and provision of a Foam Cart on the site. The Board considered several conditions relating to these life safety measures. ***As conditioned, the Board found that this criterion is met.***

9. Fiscal Analysis.

- A. *The proposed development should not place more demand on public services than it generates in tax revenue, or overburden the Town's utilities and infrastructure. The fiscal assessment will also consider how the proposed development would generate an additional need for, or affect the availability of affordable housing (and schools).*

The Board found that there was insufficient information provided by the Applicant to demonstrate that the Asphalt Plant would not have a negative impact on town services, tax base or property values. Although the Applicant testified that the project would result in increased property value for the subject property, there was no information provided by the Applicant as to the potential impact on neighboring property values, particularly residential property values. Testimony was received from abutters indicating that installation of similar facilities in other locations have resulted in decreased property values to neighboring properties. There was insufficient information provided by the Applicant to confirm that there would be no net decrease in neighborhood property values. For similar reasons, there was insufficient information provided by the Applicant to assure the Board that the tax base would not be adversely affected by the proposal. Per the Applicant, the proposed Facility will result in some additional demand on local services such as police, fire, roadways; however, there was insufficient information provided by the Applicant to demonstrate that the proposed Facility would not result in a net negative financial impact on town services.

FINDINGS - Special Permit Criteria - Section 9.3:

The Applicant failed to convince a supermajority of the Board that it should exercise its discretion to approve the project. In reaching the decision to deny, the opposing members based their decision, in whole or in part, on the following:

1. Social, economic, or community needs which are served by the proposal;

- a. The proposed Asphalt Plant will add to the Town's general fund by providing an estimated increase in tax revenues of \$20,000 and will provide 5 jobs for staff at the facility (though there is no suggestion in the record that these employees would be Westford residents).
- b. The Board found that the social and community needs of the Town are not advanced by the proposal in part because scores of residents spoke in opposition to the proposal, while only a single resident spoke in favor.
- c. The economic benefit of an additional \$20,000 per year in personal property tax was not enough to outweigh the negatives of the proposal, which are articulated in detail in other parts of this decision, including but not limited to:
 - emissions from heavy truck traffic;
 - noise that has not been shown to meet the standards for a Major Commercial Project because key information about the crushing plant was not provided;
 - increased heavy truck traffic, especially in the morning peak hour, and
 - negative impact to residential property values in the surrounding neighborhoods.
- d. For the reasons stated above, ***the Board found that this criterion is not met.***

2. Traffic flow and safety, including parking and loading;

As detailed above, the application was reviewed by MDM Transportation Consultants, the Town's peer reviewer, for traffic flow, safety, parking and loading. Specific conditions of approval relating to limitations on the number of trips in and out of Commerce Way and other transportation related improvements were considered by the Board. Similarly, the application was reviewed by the Town of Westford Engineering and Fire Departments with respect to internal site circulation to ensure the adequacy of the private driveway and emergency access for emergency vehicles. ***As conditioned, the Board found that this criterion is technically met.***

3. Adequacy of utilities and other public services;

The Applicant provided detailed information in the March 27, 2015 submittal regarding the adequacy of existing utilities to serve the proposed facility including sanitary wastewater facilities in the existing office building for the 5 employees, and an existing well, that will provide water to the two 30,000 gallon Fire Cisterns, a fire alarm system, an underground natural gas line and existing overhead electric power and telephone supply lines that will be supplied to the site. Stormwater is addressed in detail above and with numerous conditions considered by the Board. ***As conditioned, the Board found that this criterion is met.***

4. Neighborhood character and social structures;

- a. Testimony was provided by the Applicant that the Asphalt Plant would likely result in approximately thirty-seven (37) additional vehicle trips during the Weekday Morning Peak Hour (thirty-five (35) of which are anticipated to be large trucks), and twenty-five (25) additional vehicle trips during the Weekday Evening Peak Hour (twenty-three (23) of which are anticipated to be large trucks). Although the Applicant's traffic engineer testified that the proposal would not result in any significant impacts on motorist delays, the Board found that, relative to traffic, neighborhood character is defined by more than the mere operational status of a given roadway.
- b. Testimony was received from numerous abutters concerned that the introduction of the additional, consistent truck traffic would result in a substantial detriment to the character of the neighborhood. It was noted that environmental studies to date relative to noise, odor and overall air quality focused on the proposed Asphalt Plant itself, and did not account for the effects (noise associated with acceleration/deceleration of large trucks, odors and air pollutants associated with the cargo and/or exhaust from large trucks, additional minor delays

- associated with trucks entering (inclined entrance ramp) or exiting nearby Route 3, a perpetual spike in heavy truck traffic during early morning hours, etc.) as perceived by the neighborhood, particularly those neighboring properties containing dwellings.
- c. Neighbors also described existing dangerous truck movements into and out of the project site and the nearby entrance and exit ramps to Route 3, and expressed concern that this would be exacerbated by more than doubling the number of heavy truck trips accessing the site. Therefore, four (4) members of the Board found that the Applicant failed to prove that the proposed Asphalt Plant would not adversely affect neighborhood character and social structure.
 - d. Given site locus, primary vehicle traffic entering and exiting the Asphalt Plant would be accelerating either from the site driveway, or from Route 3 egress towards the Asphalt Plant, increasing vehicle merge factors, noise, and emissions to nearby residences.
 - e. The Applicant represented that plant output could significantly exceed 1,500 tons per day, for instance due to weather conditions, to maintain 1,500 tons per day average, even though Land Court testimony stated 1,500 tons maximum, and proposed vehicle trip projections (64 trucks / day exported aggregate (asphalt)) modeled a 1,500 ton output. As such concerns related to vehicle trip distribution, peak hour traffic distribution, vehicle queuing were not adequately addressed.
 - f. While it was represented in public hearing that asphalt trucks would be 24-ton or less (for smaller residential jobs) VAI data showed 25% of asphalt trucks (based on 1,500 ton output) were 32-ton trucks, and such number could be further variable based on >1,500 ton output in operations.
 - g. It was represented that ~50% of raw materials could be delivered from neighboring property, which over the course of yearly operation at maximum output could be thousands of vehicle trips. No detail was provided on source of these vehicle movements, additional loading on Rt. 40 to get these vehicles to neighboring properties to gather materials, and as noted before inadequate information on vehicle noise and emissions,
 - h. VAI models, queue lengths, and peak vehicle movements appears modeled at 1,500 ton output. It was represented that daily output could be significantly higher, and while limited by 250 daily trips, the percent of trips of asphalt laden trucks could be significantly higher. This could result in additional exit queuing at the site exit, additional concerns on Rt. 40 traffic merge of exiting vehicles, and additional impacts to neighboring residents on acceleration / emissions / odor factors.
 - i. The proposed facility, with enormous fuel tanks, smokestacks, conveyor belts, fuel burners and other heavy equipment was not deemed to be consistent with the neighborhood character.
- For the reasons above, ***the Board found that the proposal does not meet this criterion.***

5. Impacts on the natural environment; and

- a. The Applicant provided adequate protection for the site's wetland resources. Proposed improvements to the entrance driveway will require review by the Conservation Commission.
- b. The Board also considered conditions to require the Applicant to provide a bond in case of environmental contamination from the 70,000 gallons of hazardous materials that are proposed to be stored on site. The Board found that as conditioned the Applicant provides adequate protection for fire and life safety related to the storage of hazardous materials.
- c. The proposed Asphalt Plant and materials processing facility received an Air Quality Permit from the Department of Environmental Protection 310 CMR 7.02 – Air Quality Non-Major Comprehensive Plan Application Transmittal No. X227251, Application No. MBR-09-IND-005, Modified Conditional Approval (DEP Permit). The DEP Board found that the proposed plant uses the Best Available Control Technology (BACT). The DEP Permit contains numerous

conditions regarding limits on air pollutant emissions, limits on noise, monitoring and reporting, requirements. The Board considered conditions of approval replicate these conditions should the DEP fail to enforce the conditions of approval.

- d. Board found that emissions from heavy trucks were not adequately addressed as detailed in response to Section 9.3A.7. Community Character criterion above.
- e. For the reasons above, ***the Board found that the proposal does not meet this criterion.***

6. Potential fiscal impact, including impact on town services, tax base, property values, and employment.

- a. The Board found that there was insufficient information provided by the Applicant to demonstrate that the project would not have a negative impact on town services, tax base or property values. Although the Applicant testified that the project would result in increased property value for the subject property, there was no information provided by the Applicant as to the potential affect to neighboring property values.
- b. Testimony was received from abutters indicating that installation of similar facilities in other locations have resulted in decreased property values to neighboring properties. There was insufficient information provided by the Applicant to confirm that there would be no net decrease in neighborhood property values.
- c. For similar reasons, there was insufficient information provided by the Applicant to assure the Board that the tax base would not be adversely affected by the proposal. Per the Applicant, the proposed Asphalt Plant will result in some additional demand on local services such as police, fire, roadways; however, there was insufficient information provided by the Applicant to demonstrate that the proposed Facility would not result in a net negative financial impact on town services.
- d. For the reasons above, ***the Board found that the proposal does not meet this criterion.***

7. Board's Evaluation of the Project

Even in circumstances in which each of the objective performance standards set forth in the Zoning Bylaw are met, which was not found to be the case here, the Board is required to exercise its judgment in determining whether to grant a discretionary special permit. In this instance, the Board acknowledges that the Land Court has made a determination that the Asphalt Plant would constitute "Light Manufacturing" based upon its parsing of the definition of that term set forth in the Bylaw. Even accepting, for purposes of this decision only, and without waiving the Board's rights to appeal the LC Decision in this regard, that the proposal technically meets the definition of light manufacturing as determined by the Land Court, common sense and commonly-accepted planning principles would suggest that an asphalt manufacturing facility, capable of producing 400 tons of asphalt per hour, requiring a 68-foot smokestack, large outdoor conveyor belts, storage of seventy thousand (70,000) gallons of petroleum products, high-heat processing and other similar features, and anticipated to produce 250 additional heavy truck trips per day, was not the type of use contemplated when the Town determined to allow light manufacturing uses in the IA Zoning District. Thus, the Board chose not to exercise its discretion to grant a MCP special permit.

The Board's decision was further informed by the concerns expressed by numerous residential neighbors of the Asphalt Plant, who described dangerous and disturbing impacts relating to the existing heavy truck traffic at the site, and the inevitable increase in such impacts were the Board to authorize a more than doubling of such heavy truck trips and the new potential for neighbors to experience unpleasant odors from the manufacture and transport of the asphalt material.

Finally, the fact that scores of residential neighbors of the project site attended numerous sessions of the public hearing and offered forceful written and verbal opposition to the project could not be ignored by the Board in exercising its discretionary review of the MCP special permit application. Rarely, if ever, has the Board been presented with an application that has engendered such a public outcry by so many residents.

Planning Board members voting to APPROVE:

Katherine Hollister

Planning Board members voting not to APPROVE:

*Michael Green, Chair
Dennis Galvin, Vice Chair
Matt Lewin
Darrin Wizst*

NOT VALID FOR RECORDING UNTIL CERTIFIED BY TOWN CLERK

I hereby certify that this is a true copy of the decision rendered by the Planning Board and filed in the office of the Town Clerk on _____, ____; I further certify that twenty (20) days have elapsed after the within decision was filed in the office of the Town Clerk for the Town of Westford, and that no appeal has been filed, or that if such appeal has been filed, that it has been dismissed or denied.

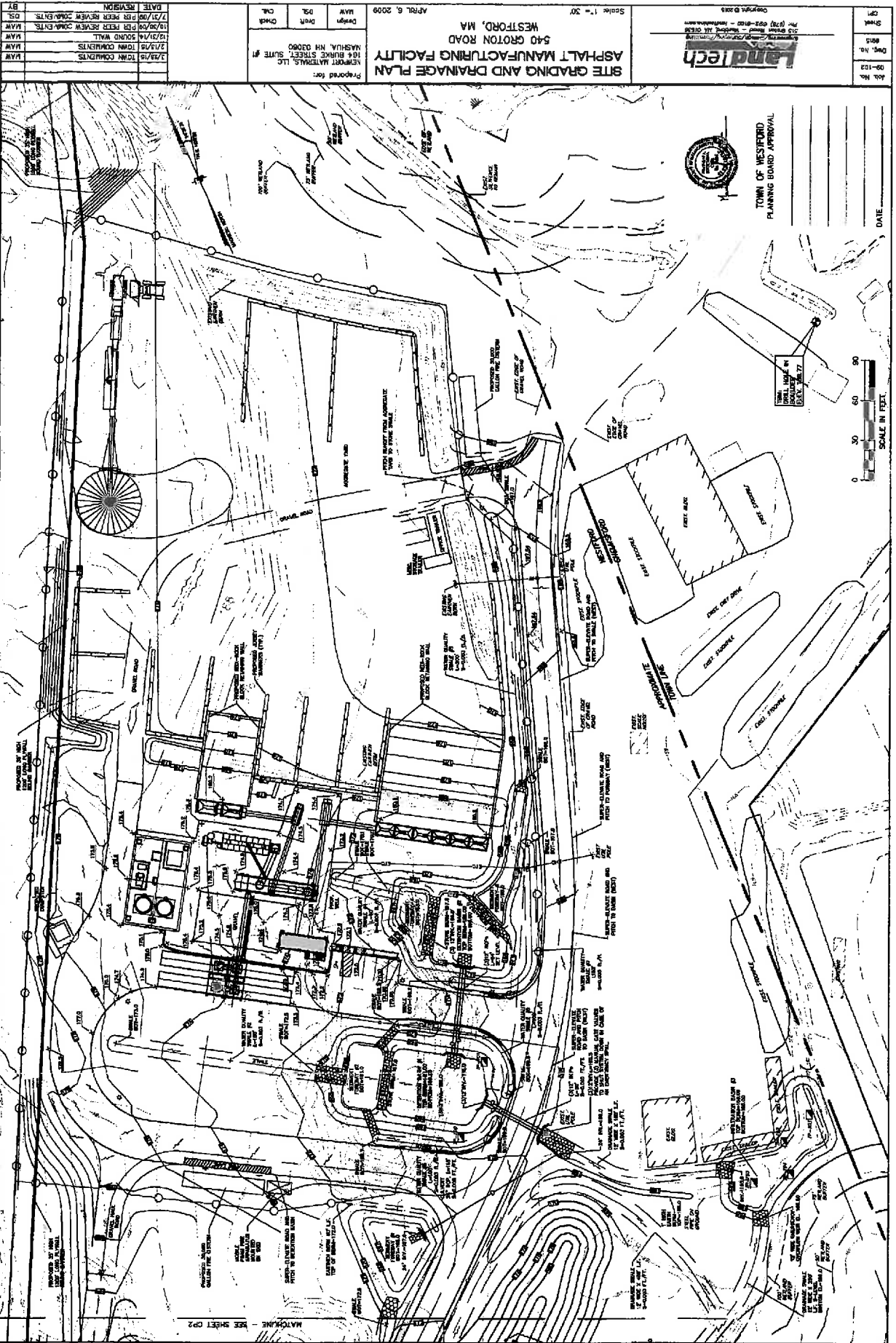
Date:

Attest:

Kaari Mai Tari
Town Clerk

cc: Attorney Douglas C. Deschenes for 540 Groton Road LLC, Newport Materials LLC, Planning Boards of Acton, Carlisle, Chelmsford, Groton, Littleton, Tyngsborough, Abutters within 300 feet; Town Engineer, Building Commissioner, Westford Fire Department, Zoning Board of Appeals, Board of Health, School Committee

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Fax: 215-261-4001
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GENERAL NOTES

1. THE PROPOSED USE OF THE BUILDING IS A ASPHALT BATCH PLANT AND REQUIRES SITE PLAN REVIEW BY THE TOWN OF WESTFORD PLANNING BOARD.
2. SETBACKS WILL BE IN ACCORDANCE WITH THE TOWN OF WESTFORD ZONING BYLAWS.
3. THE BUILDING AND FENCE IN ACCORDANCE WITH THE WESTFORD ZONING BYLAWS.
4. THE SITE IS LOCATED IN THE TOWN OF WESTFORD'S WATER RESOURCE PROTECTION DISTRICT 2.

LANDSCAPE NOTES

1. ALL PLANT STOCK SHALL CONFORM TO ANSI Z604.1 - NURSERY STOCK, LATEST EDITION (AMERICAN ASSOCIATION OF NURSERYMEN, INC.).
2. NO TREES OR SHRUBS SHALL BE PLANTED AT THE STREET INTERSECTION WHERE THEY COULD OBSTRUCT THE VIEW OF TRAFFIC.
3. ALL TREES SHALL BE GUARANTEED BY THE DEVELOPER FOR THEIR LIFESPAN AND GOOD HEALTH FOR TWO (2) YEARS AFTER PLANTING.
4. EXCEPT AS NOTED BELOW, ALL AREAS DESTROYED DURING CONSTRUCTION SHALL BE LOANER AND HYDRO-SEEDING. LOAN DEPTH SHALL BE A MINIMUM OF 6 INCHES. ALL LOAN PLACED SHALL BE PLANTED AND FILL OF SOIL, LUMPS, STONES AND OTHER DEBRIS MATERIAL.

LIGHTING NOTES

1. ALL LIGHT FIXTURES SHALL BE SHIELDED AND AIMED SO THAT THE LIGHTS CAN NOT BE SEEN FROM AROUND THE PROPERTY.
2. NO EXTERIOR LIGHTING MAY BE USED IN A MANNER THAT PRODUCES A GLOOM OR A DIRECT GLARE NEARBY THE PROPERTY.
3. NO LIGHT FIXTURES MAY BE AIMED AT THE SKY OR TOWARD ANY AREA STRUCTURE, OR SURFACE THAT IS NOT INTENDED TO BE ILLUMINATED.
4. LIGHTING IS PERMITTED ONLY IF IT IS DIRECTED TOWARD THE STRUCTURE BEING ILLUMINATED.
5. WALL-MOUNTED FIXTURES SHALL BE AIMED DIRECTLY DOWNWARD AND PROPERLY SHIELDED.
6. NO EXTERIOR LIGHT SOURCE SHALL BE INSTALLED MORE THAN 30 FEET ABOVE GROUND.
7. MOVED LIGHTS, LUMPS, STONES OR OTHER DEBRIS MATERIAL SHALL BE REMOVED FROM THE PROPERTY.
8. TRADITIONAL DECORATIVE HOLIDAY LIGHTS MAY BE OPERATED ON A TEMPORARY BASIS.
9. IF ANY EXTERIOR LIGHTING IS INSTALLED, IT SHALL BE INSTALLED IN ACCORDANCE WITH THE TOWN OF WESTFORD ZONING BYLAWS.
10. PROPOSED EXTERIOR LIGHTING SHALL BE USED TO ILLUMINATE THE BUILDING AND THE LOT TO BE SHUT OFF AT NIGHT. THE TIME IS TO BE DETERMINED BY BUILDING MANAGER.
11. SEE LIGHTING PHOTOGRAPHIC PLAN (SHEET LPT) FOR ADDITIONAL NOTES AND DETAILS.

LEGEND

PROPOSED	EXISTING
BUILDING SETBACK LINE	
CONTOUR	
EDGE OF PARKING	
STORMWATER DRAIN	
TREELINE	
STONE WALL	
UTILITY POLE	
UNDERGROUND UTILITY	
TELEPHONE OR CABLE	
GAS LINE	
STORM DRAIN	
DRAINAGE FLOW ARROW	
HEADWALL	
DITCH BURN	
WETLANDS	
WETLAND BUFFER	
CHANGING FENCE	
SETBACK WITH	
STORM PATTERN	
STANDARD MATERIALS	
DEEP OBSERVATION HOLE	
WELL	
TREE	
RETAINING WALL	

CONSTRUCTION NOTES

1. ALL DISTURBED AREAS ARE TO RECEIVE 6" OF LOAM & SEED.
2. THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS AND GRASSES ON SITE AND SHALL IMMEDIATELY REPORT ANY DISCREPANCIES OR DEVIATIONS FROM THE CONSTRUCTION PLANS TO THE TOWN OF WESTFORD PLANNING BOARD.
3. TOPSOILING AND PLANTING INFORMATION OBTAINED FROM AN AERIAL SURVEY CONDUCTED BY EASTERN TOPSOILING, WESTFORD, MA, SCALE: 1" = 40' CONTAINING INFORMATION DATED 20 APR 2004 (1:4000) COMPILED DATE: 12 NOV 2002.
4. AERIAL PHOTOGRAPHY AS PROVIDED BY EASTERN TOPSOILING, WESTFORD, MA, SCALE: 1" = 40' CONTAINING INFORMATION DATED 20 APR 2004 (1:4000) COMPILED DATE: 12 NOV 2002.
5. THE SITE PLAN IS NOT LOCATED IN THE 100 YEAR FLOOD HAZARD AREA AS DETERMINED BY THE TOWN OF WESTFORD PLANNING BOARD.
6. TEMPORARY EROSION CONTROL SHALL BE INSTALLED AT ALL ELEVATIONS AS SHOWN ON THE SITE PLAN.
7. PLACED NETLAND LOCATIONS SHOWN ON THIS MAP WERE PROVIDED BY A FIELD SURVEY CONDUCTED BY NORTHERN ENVIRONMENTAL SERVICES, INC. IN NOVEMBER 2007. THE DATE IS 11/15/07. THE DATE OF THE SURVEY IS 11/15/07. THE DATE OF THE SURVEY IS 11/15/07.
8. THE SITE PLAN IS NOT LOCATED IN THE 100 YEAR FLOOD HAZARD AREA AS DETERMINED BY THE TOWN OF WESTFORD PLANNING BOARD.
9. FOR STORMWATER COLLECTION SYSTEM SEE DETAILS AND SECTION SHEETS.
10. SEE STORM WATER POLLUTION PREVENTION PLAN, SHEET SNIPPY, FOR ADDITIONAL EROSION CONTROL NOTES AND DETAILS.
11. LOCATION AND SIZE OF EXISTING UTILITIES IS APPROXIMATE ONLY. CONTRACTOR MUST VERIFY LOCATION AND SIZE OF UTILITIES PRIOR TO CONSTRUCTION. NO DATE SHALL BE NOTED AT LEAST 72 HOURS PRIOR TO ANY CONSTRUCTION (1-800-344-7233).
12. THE CONTRACTOR SHALL VERIFY THE LOCATION AND DEPTH OF PRIVATE UTILITIES ARE SUBJECT TO THE APPROVAL OF THE TOWN OF WESTFORD PLANNING BOARD.
13. COORDINATE ELECTRIC, CABLE AND TELEPHONE (UTILITY) CONNECTIONS WITH RESPECTIVE UTILITY COMPANIES.
14. COORDINATE GAS MAIN CONNECTION WITH LOCAL GAS COMPANY.
15. COORDINATE FIRE PROTECTION REQUIREMENTS WITH THE TOWN OF WESTFORD FIRE DEPARTMENT.
16. CONTRACTOR SHALL NOT HAVE ANY SANITARY WASTE FACILITIES, SANITARY WASTE FACILITIES PROVIDED IN ADJACENT BUILDING (TOWARD MODERN CONVENTIONAL BUILDING).
17. THE PROPOSED WELL REQUIRE A SEPARATE PERMIT FROM THE WESTFORD BOARD OF HEALTH.
18. THE CONTRACTOR SHALL HAVE A 1/4" DRAINAGE WATER SERVICE LINE.
19. ALL CONSTRUCTION SHALL CONFORM TO THE TOWN OF WESTFORD ZONING BYLAWS AND ALL CONSTRUCTION SHALL CONFORM TO THE TOWN OF WESTFORD PLANNING BOARD APPROVAL OF ENVIRONMENTAL PROTECTION AND THE COMMUNITY OF MASSACHUSETTS.
20. SITE SHALL CONFORM TO ALL APPLICABLE FIRE PREVENTION CODES, STATUTES OR REGULATIONS.
21. SITE SHALL CONFORM TO AMERICANS WITH DISABILITIES ACT (ADA) REQUIREMENTS.



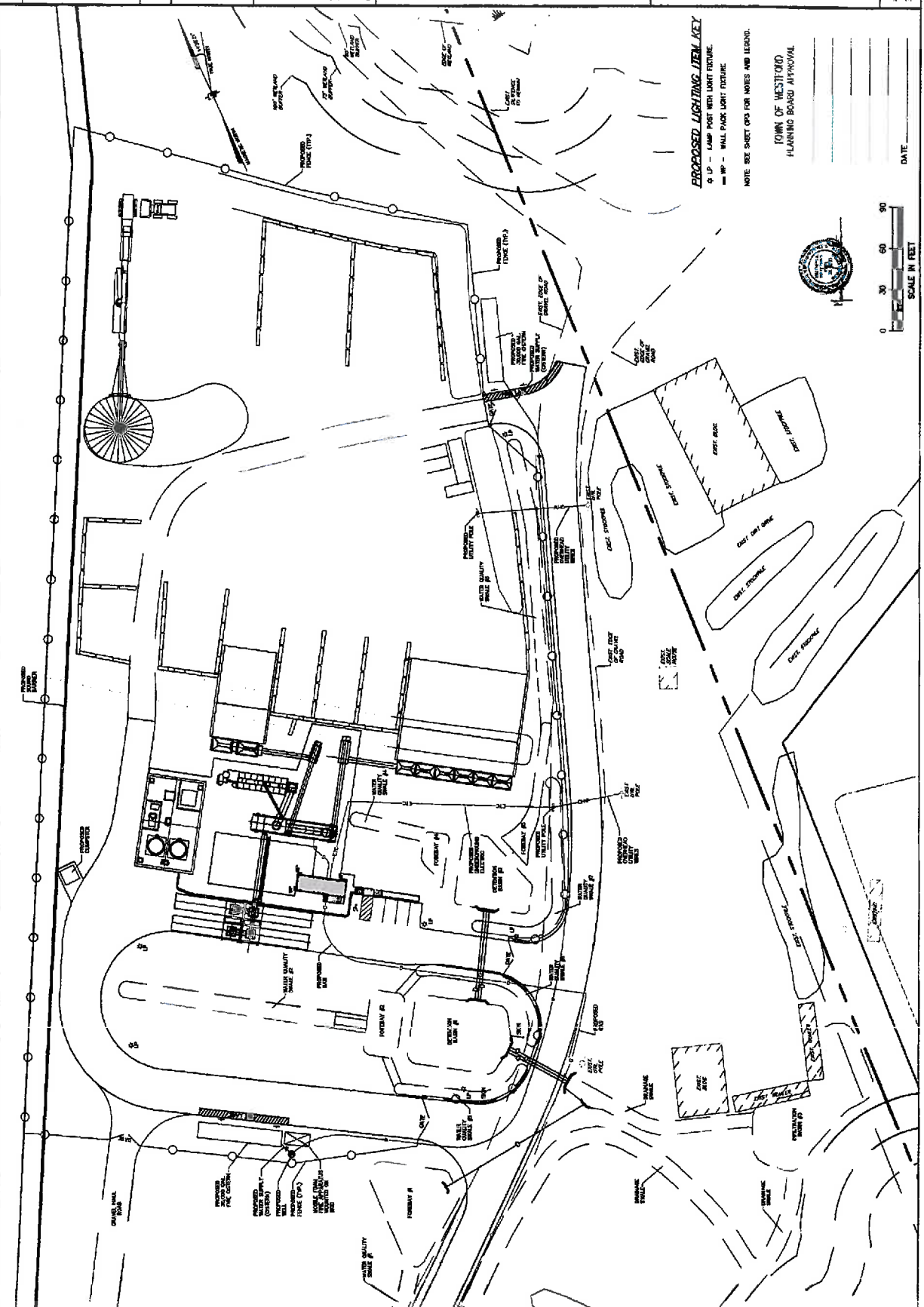
TOWN OF WESTFORD
PLANNING BOARD APPROVAL


DATE

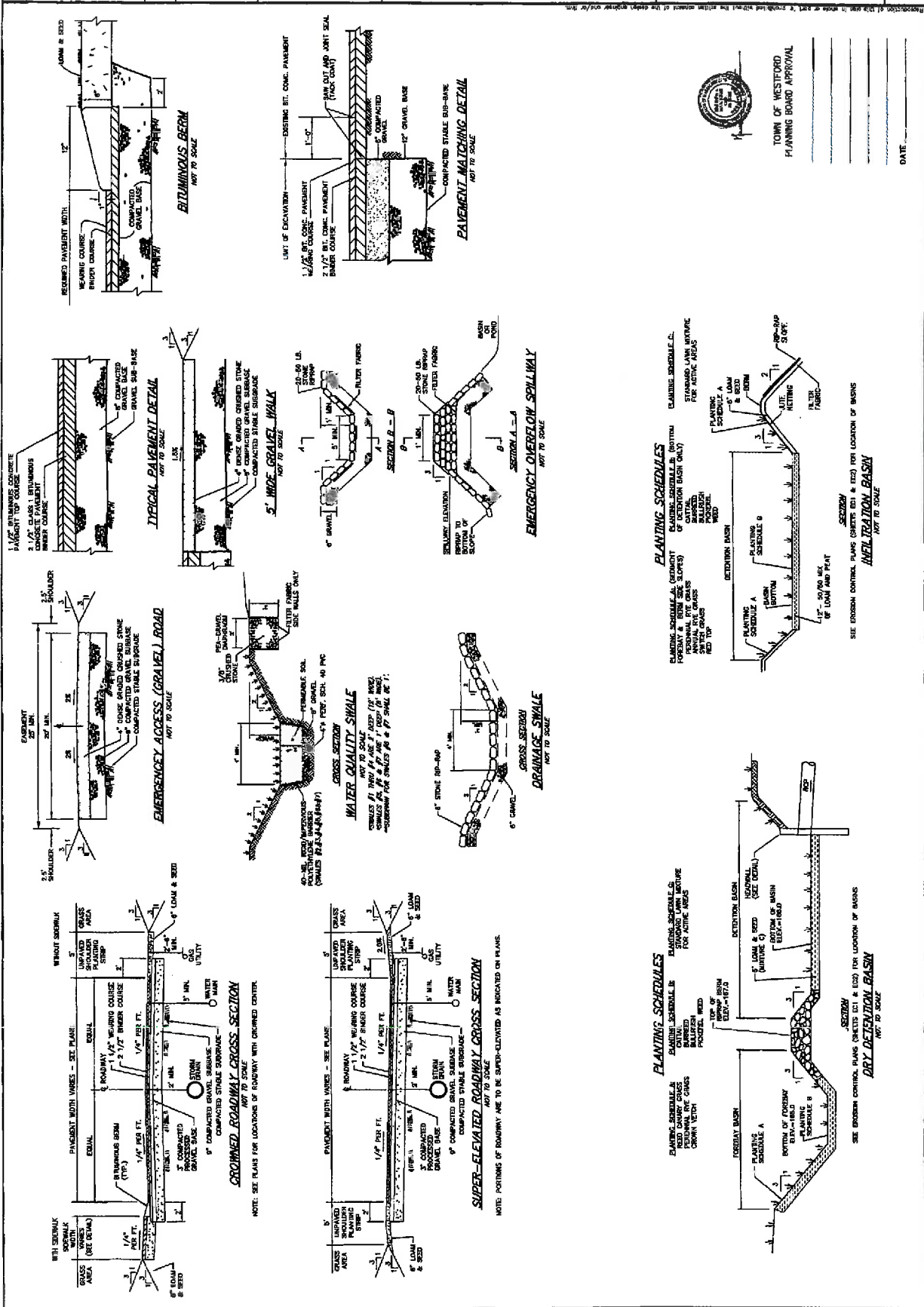
GENERAL NOTES AND LEGEND
540 GROTON ROAD
WESTFORD, MA
ASPHALT MANUFACTURING FACILITY
PREPARED FOR:
NORTHPORT MATERIALS, LLC
NORTHPORT, MA 02859
DATE: 04/05/2008
DRAWN BY: [blank]
CHECKED BY: [blank]
DATE: [blank]

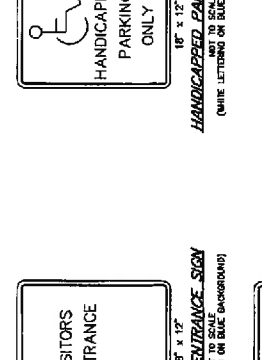
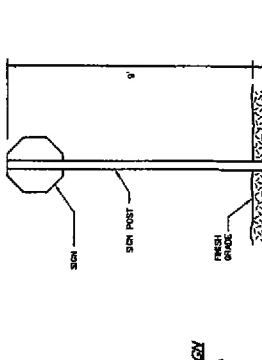
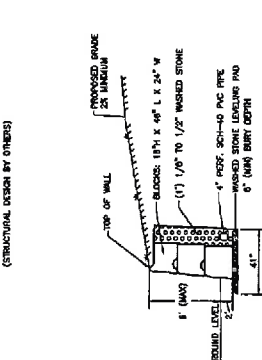
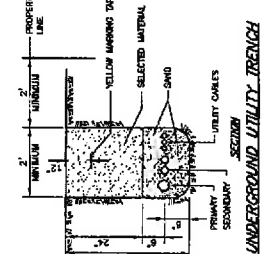


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Proj. No.	09-102
Job. No.	

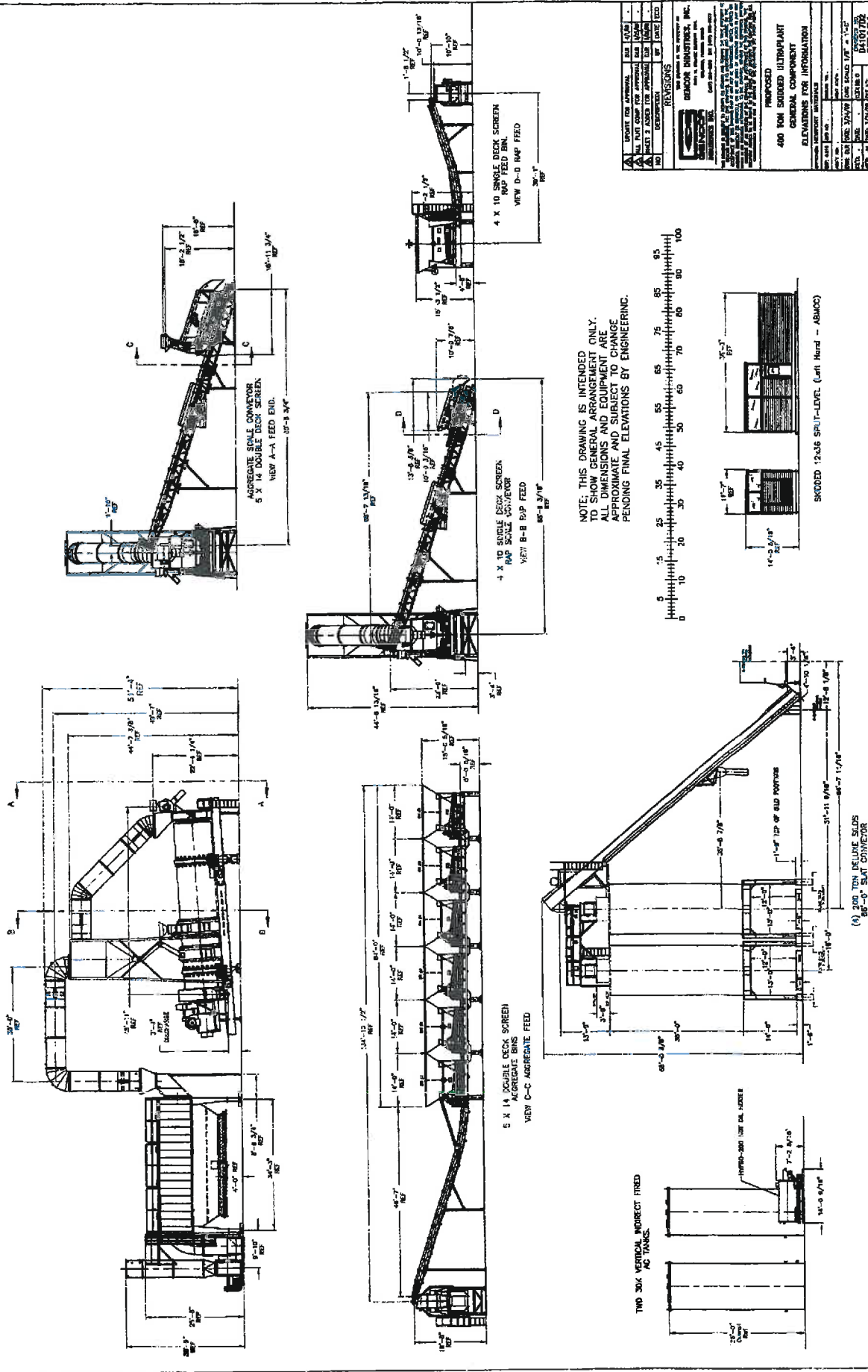


DATE	7/25/09	DESIGN	APRIL 8, 2008	Scale: NONE	 <p>Landtech 1000 Old Derby Road Westford, MA 01886 (978) 855-1100 www.landtech.com</p>
BY	OSL	OSL	OSL	OSL	
DATE	10/26/08	DESIGN	APRIL 8, 2008	Scale: NONE	
BY	OSL	OSL	OSL	OSL	
DATE	10/26/08	DESIGN	APRIL 8, 2008	Scale: NONE	





ALL ELEVATIONS ARE SHOWN IN LINE OR AT PERPENDICULAR ANGLES FOR CLARITY OF THE VIEW.
PLEASE VIEW PLANT LAYOUT PLAN VIEW FOR EQUIPMENT POSITIONING.
THIS DRAWING IS SUPPLIED FOR INFORMATION, AND IS NOT MEANT FOR CONSTRUCTION.

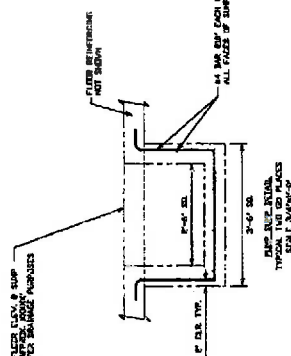


NOTE: THIS DRAWING IS INTENDED TO SHOW GENERAL ARRANGEMENT ONLY. ALL DIMENSIONS AND EQUIPMENT ARE APPROXIMATE AND SUBJECT TO CHANGE PENDING FINAL ELEVATIONS BY ENGINEERING.

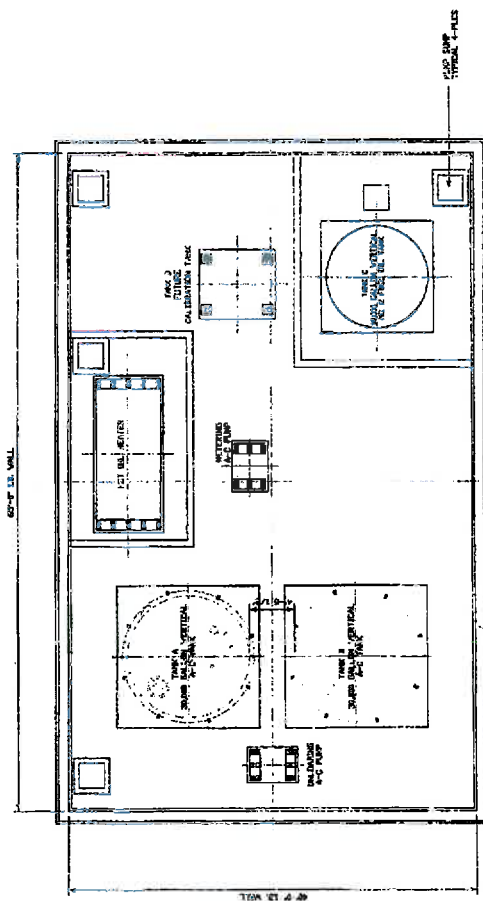
SKIDDER 1236 SPLIT-LEVEL (Left Hand - ABMCC)

(A) 200 TON DELUXE SILOS
86'-0" SLAT CONVEYOR

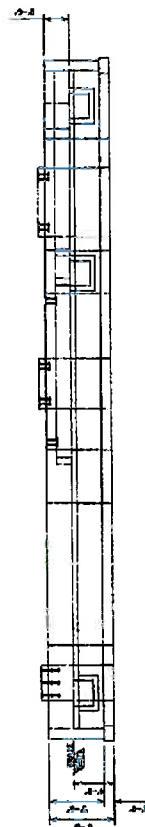
TANK FARM FUNDATION



1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 840.



ROLE OF THE JOURNAL



ENGINEERING TECHNOLOGIES GROUP, INC.
AN ISO 9001 REGISTERED COMPANY
10000 WILSON AVENUE, SUITE 100, WESTFORD, MA 01085

MASS

HUA DRAWING NO. PLANT PROJECT

TANK FARM - PLAIN & SUE LVEDSON, MA

NEWPORT MATERIALS, LLC

| PLAN | DATE
REVISED | DATE | BY | CHKD | APP'D | SCALE | SHEET NO. | SHEET TOTAL |
|--|-----------------|------|----|------|-------|--|---------------|-------------|
| <p><small>THIS DRAWING IS THE PROPERTY OF ETG. IT IS TO BE USED ONLY FOR THE PROJECT AND SITE SPECIFICALLY IDENTIFIED HEREON. IT IS NOT TO BE REPRODUCED, COPIED, REUSED, OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF ETG. ANY VIOLATION OF THESE TERMS SHALL BE CONSIDERED A BREACH OF CONTRACT AND SUBJECT TO LEGAL ACTION.</small></p> | | | | | | <p>DO NOT SCALE DWG
 USE DIMENSIONS ONLY</p> | | |
| | | | | | | <p>3 1/8" = 1' - 0"</p> | <p>1 OF 1</p> | <p>10/1</p> |



| SINCE SERVICE | | |
|---------------|-------|-----|
| DDJ | THO | AD |
| * | W/INT | ENL |
| * | W/INT | ENL |
| * | W/INT | ENL |
| * | W/INT | ENL |
| * | W/INT | ENL |

RECYCLING


GENCORP INDUSTRIES, INC.
1001 N. Main Avenue
Cincinnati, Ohio 45202
(513) 381-2000 ext. 240-2427

Two divisions in the plastics are
GENCORP INDUSTRIES, INC.
1001 N. Main Avenue
Cincinnati, Ohio 45202
(513) 381-2000 ext. 240-2427

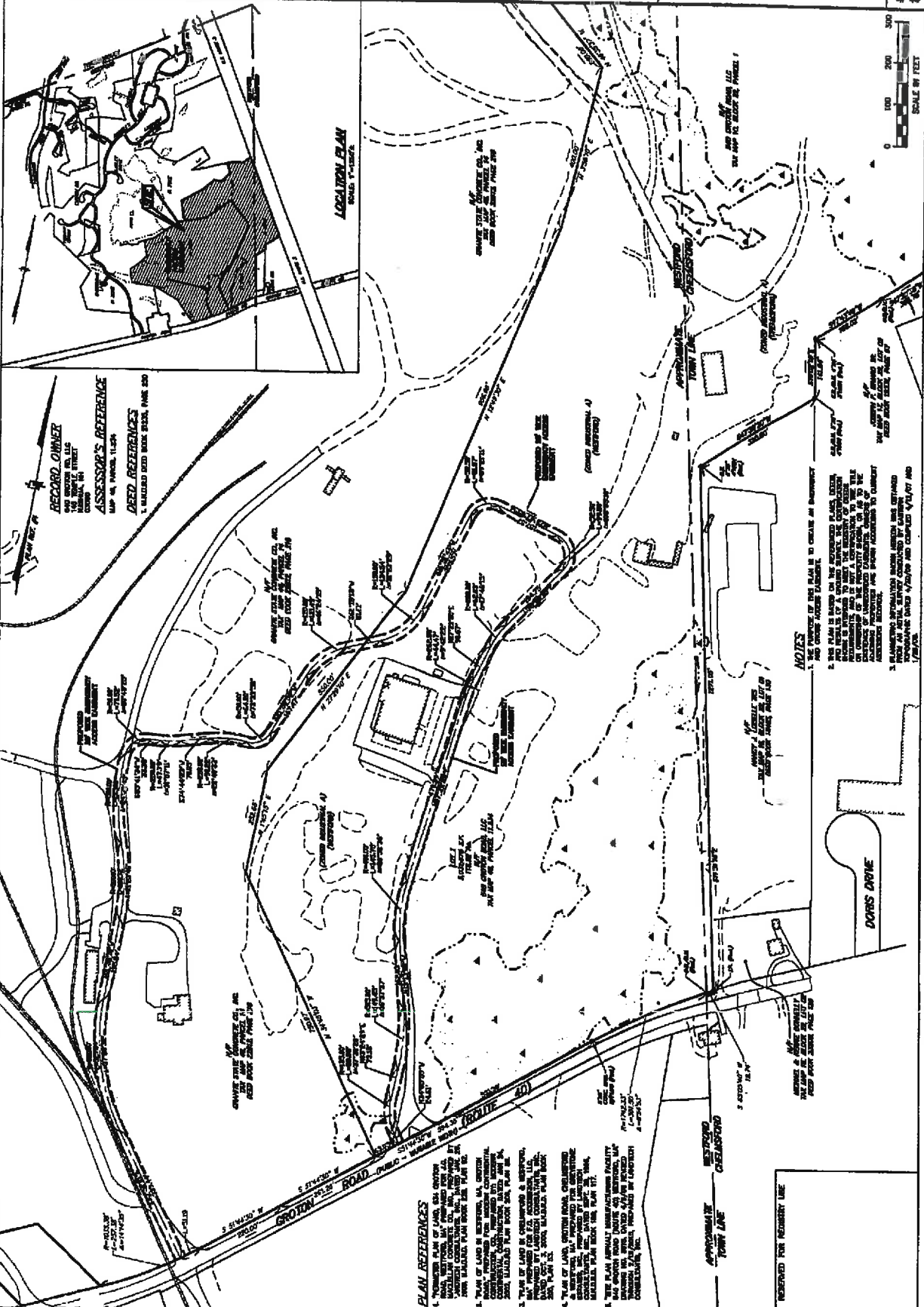
GENCORP INDUSTRIES, INC. is a leader in the plastics industry. The company has a long history of innovation and quality. The company's products are used in a wide variety of applications, including automotive, industrial, and consumer products. The company's commitment to excellence is reflected in its ISO 9001 certification and its reputation for reliability and customer service.

PROPOSED PLANT LAYOUT
100 TON SKIDDED ULTRAPLANT

[illegible]

- [illegible]

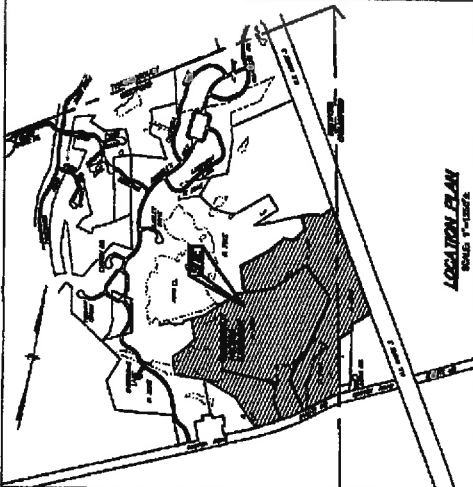




RECORD OWNER
540 GROTON ROAD, LLC
150 GROTON ROAD, WESTFORD, MA 01886

ASSESSOR'S REFERENCE
MAP 44, TOWN OF 11.24

DEED REFERENCES
1. HAZARD DEED BOOK 2026, PAGE 200

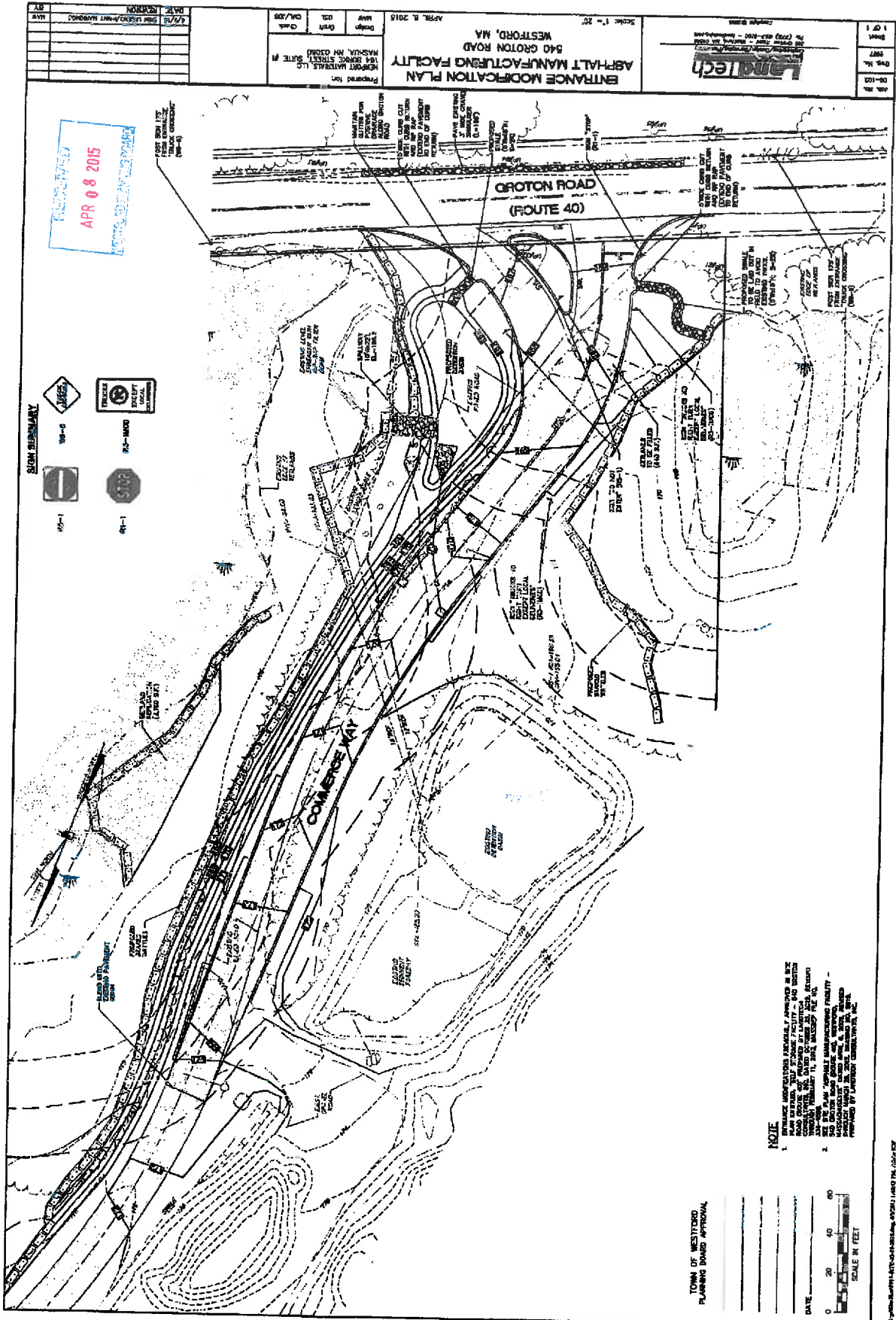


PLAN REFERENCES

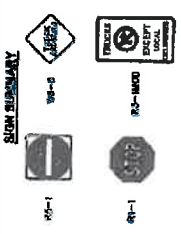
1. PRELIMINARY PLAN OF LAND, 540 GROTON ROAD, WESTFORD, MA, PREPARED FOR 540 GROTON ROAD, LLC, BY LANDTECH, INC., 150 GROTON ROAD, WESTFORD, MA 01886, DATED 12/15/14.
2. PLAN OF LAND IN WESTFORD, MA, TOWN OF 11.24, PREPARED FOR 540 GROTON ROAD, LLC, BY LANDTECH, INC., 150 GROTON ROAD, WESTFORD, MA 01886, DATED 12/15/14.
3. PLAN OF LAND IN WESTFORD, MA, TOWN OF 11.24, PREPARED FOR 540 GROTON ROAD, LLC, BY LANDTECH, INC., 150 GROTON ROAD, WESTFORD, MA 01886, DATED 12/15/14.
4. PLAN OF LAND, 540 GROTON ROAD, WESTFORD, MA, PREPARED FOR 540 GROTON ROAD, LLC, BY LANDTECH, INC., 150 GROTON ROAD, WESTFORD, MA 01886, DATED 12/15/14.
5. PLAN OF LAND, 540 GROTON ROAD, WESTFORD, MA, PREPARED FOR 540 GROTON ROAD, LLC, BY LANDTECH, INC., 150 GROTON ROAD, WESTFORD, MA 01886, DATED 12/15/14.
6. PLAN OF LAND, 540 GROTON ROAD, WESTFORD, MA, PREPARED FOR 540 GROTON ROAD, LLC, BY LANDTECH, INC., 150 GROTON ROAD, WESTFORD, MA 01886, DATED 12/15/14.

- NOTES**
1. THE PURPOSE OF THIS PLAN IS TO CREATE AN EMERGENCY ACCESS EASEMENT.
 2. THIS PLAN IS BASED ON THE SURVEYED PLANS, LITERATURE, AND FIELD NOTES ON FILE AT THE TOWN OF 11.24, WESTFORD, MA. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS FOUND NO DISCREPANCIES BETWEEN THE SURVEYED PLANS AND THE FIELD NOTES.
 3. THE PLAN IS BASED ON THE SURVEYED PLANS, LITERATURE, AND FIELD NOTES ON FILE AT THE TOWN OF 11.24, WESTFORD, MA. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS FOUND NO DISCREPANCIES BETWEEN THE SURVEYED PLANS AND THE FIELD NOTES.
 4. THE PLAN IS BASED ON THE SURVEYED PLANS, LITERATURE, AND FIELD NOTES ON FILE AT THE TOWN OF 11.24, WESTFORD, MA. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS FOUND NO DISCREPANCIES BETWEEN THE SURVEYED PLANS AND THE FIELD NOTES.

REVIEWED FOR RESIDENT LINE



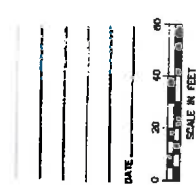
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TOWN OF WESTFORD



NOTE

1. ENTRANCE MODIFICATIONS SHOWN ARE APPROVED BY THE TOWN OF WESTFORD PLANNING BOARD. THE TOWN OF WESTFORD PLANNING BOARD HAS REVIEWED THE PLAN AND HAS DETERMINED THAT THE PROPOSED MODIFICATIONS ARE IN ACCORDANCE WITH THE TOWN OF WESTFORD PLANNING BOARD RESOLUTIONS. THE TOWN OF WESTFORD PLANNING BOARD HAS REVIEWED THE PLAN AND HAS DETERMINED THAT THE PROPOSED MODIFICATIONS ARE IN ACCORDANCE WITH THE TOWN OF WESTFORD PLANNING BOARD RESOLUTIONS.

TOWN OF WESTFORD
PLANNING BOARD APPROVAL



| | |
|-----------------|-------------------------------|
| DATE | APR 8, 2015 |
| DESIGNER | LANDSCAPE CONSULTANTS, INC. |
| CHECKED | LANDSCAPE CONSULTANTS, INC. |
| DATE | APR 8, 2015 |
| PROJECT | ENTRANCE MODIFICATION PLAN |
| LOCATION | 340 GORTON ROAD, WESTFORD, MA |
| CLIENT | HERBERT WATKINS, LLC |
| PROJECT NO. | 104 BOWNE STREET, SUITE #1 |
| PROJECT NAME | HERBERT WATKINS, LLC |
| PROJECT ADDRESS | 104 BOWNE STREET, SUITE #1 |
| PROJECT CITY | MASSACHUSETTS |
| PROJECT STATE | MASSACHUSETTS |
| PROJECT ZIP | 01381 |
| PROJECT PHONE | 508-336-1111 |
| PROJECT FAX | 508-336-1112 |
| PROJECT EMAIL | info@landscapema.com |
| PROJECT WEBSITE | www.landscapema.com |